International Labour Conference, 89th Session, 2001

NIGHT WORK OF WOMEN IN INDUSTRY

INTERNATIONAL LABOUR OFFICE · GENEVA

NIGHT WORK OF WOMEN IN INDUSTRY

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Report III (Part 1B)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

General Survey of the reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948

Report of the Committee of Experts on the Application of Conventions
and Recommendations (articles 19, 22 and 35 of the Constitution)

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NIGHT WORK OF WOMEN IN INDUSTRY

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Introduction

General

1. In accordance with article 19 of the Constitution of the International Labour Organization, the Governing Body of the International Labour Office, at its 273rd Session (November 1998) decided to invite governments which have not ratified the Night Work (Women) Convention, 1919 (No. 4), or the Night Work (Women) Convention (Revised), 1934 (No. 41), or the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, to submit reports on the state of their law and practice regarding these matters.[1] These reports, in addition to those submitted in accordance with articles 22 and 35 of the ILO Constitution by States which have ratified one or more of these Conventions, have enabled the Committee of Experts on the Application of Conventions and Recommendations to prepare a General Survey on the effect given to these instruments both in the States which are bound by the provisions of these instruments and in those which are not. This is the first General Survey carried out by the Committee on the above-cited instruments since their adoption.

Origins of the night work prohibition: Women as a special class of factory workers

2. Night work is a by-product of the industrial revolution of the eighteenth and nineteenth centuries. Prior to that time, as darkness descended, most manual labour was compelled to cease. Both human and animal labour occurred from sunrise to sunset in agriculture. Industrialization, with machinery that could run around the clock, and with artificial lighting, changed that. In the early stages of industrialization, working conditions were harsh. Not only were working hours long, but the manual labour was arduous. Women workers were felt to be particularly affected as, in many cases, when they left the factory they returned to a dwelling devoid of labour-saving devices and faced the additional burdens of child rearing, cooking and housework.

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[1] See GB.273/205, para. 24.

3. The advent of night time working in factories disrupted long-established social patterns predicated on working days and a weekly day of rest. Those concerned with improving the miserable circumstances of factory workers were struck by the particularly harsh impact of night work on women and children and thus made the adoption of measures to protect women and children from the harmful effects of night work a priority. Night work for women was first prohibited in England, in 1844. More than 30 years later, England's approach was followed by Switzerland in 1877, New Zealand in 1881, Austria in 1885, the Netherlands in 1889 and France in 1892. At a time when women were viewed as physically weaker than men, as more susceptible to exploitation, and primarily as mothers and housekeepers, the legislators' articulated motivation in enacting this prohibition was concern for women's safety, moral integrity and health and for family welfare. For these reasons, legislators of that period viewed adult women and children as belonging to a special class of factory workers needing special protection, who, in fact, were not considered to be competent to make valid choices.

4. The idea of protecting women from arduous working conditions also found expression in the Preamble of the ILO Constitution which provides that "an improvement of those [labour] conditions is urgently required; as, for example, by the regulation of the hours of work, including [...] the protection of children, young persons and women". The question of night employment of women has been a recurrent theme in the standard-setting work of the ILO. Since its early days, the Organization has demonstrated a particular interest in the regulation of the harmful effects of night work as well as the protection of women workers. The Maternity Protection Convention, 1919 (No. 3), the Night Work of Young Persons (Industry) Convention, 1919 (No. 6), and the Night Work (Bakeries) Convention, 1925 (No. 20), were among the first to be adopted by the International Labour Conference attesting to the Organization's primary concern about the effective regulation of working hours and the protection of the health and welfare of employed mothers. Convention No. 4 stands, therefore, at the convergence point of this twofold preoccupation – humanizing working conditions by limiting night work in general, while setting up women-specific protective rules principally on account of their unique reproductive role and traditional, burdensome family responsibilities.

5. From the Washington Convention of 1919 to the 1934 instrument, and from the 1948 revision to the 1990 Protocol and Convention No. 171, the ILO standards on night work of women have been elaborated upon to reflect, on each occasion, the changing nature of night work, the prevailing social perceptions about the acceptability of such work and more generally about the place of women in society and the labour market. Thus, the persistent quest for flexibility in the application of the prohibition of night work for women, as the driving force behind the revision exercises of 1934, 1948 and 1990, was only echoing, on the legislative level, the changing role of women in economic life, including the growing need to ensure equal opportunities and treatment in employment.

6. Special protective measures for women may be broadly categorized into two types: those aimed at protecting women's reproductive and maternal capacity, and those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society. In general, it is recognized that protective measures which protect the reproductive capacity of women are necessary for the achievement of substantive equality. Several ILO Conventions adopted from 1919 to 2000 (for instance, Conventions Nos. 3, 103 and 183, all on maternity protection) reflect this view. Such measures include those dealing with maternity protection in the strict sense (maternity leave, job and income security, medical benefits) and protection of special conditions of work for pregnant or nursing mothers (nursing breaks, organization of working hours, restriction of exposure levels to particular substances and processes, prohibition of night work and work considered to be dangerous to the foetus or to pregnant or nursing women). General protective measures, which have usually taken the form of blanket prohibitions or restrictions, as in relation to night work, have always been questioned by some and recently have been subjected to extensive criticism as obsolete and unnecessary infringements of the fundamental principles of equality of opportunity and equal treatment as between men and women. The instruments under study fall into this latter category.

7. The recent debate over the appropriateness of the instruments prohibiting and restricting night work for women has several contentions expressed by various parties. Firstly, it is contended that the harmful effects of night work on women have been largely exaggerated and are in any event no worse than the effects of such work on men; and further that, in many parts of the world, the awful night working conditions which prompted the original approach have been improved. Secondly, it is contended that there are situations where women want or need to earn income and blanket prohibitions are seen as preventing women from obtaining employment, thus restricting their access to specific jobs, certain occupations, higher wages and premium payments. The prohibitions are thus seen as contravening the principle of equality as they prevent women from exercising their right to equal access to jobs. It has also been contended that in practice, even in the face of legal prohibitions, women are working at night but without any protection. Thirdly, it is argued that, at the macro level, considerations related to job creation, productivity and economic growth would call for the repealing of such restrictions on night work. This brings up the fourth contention that blanket prohibitions and restrictions should be replaced with necessary and proportionate protections such as those on maternity, health, adequate transportation and security, and other social services. On the other hand, there are those who contend that in some parts of the world the role and status of women has not significantly changed and that their only means of protection from having to engage in deplorable conditions of work at night would be the maintenance of the restrictions as contained in the instruments under review.

The Conventions on night work of women and the Working Party on Policy regarding the Revision of Standards

8. The Working Party on Policy regarding the Revision of Standards was set up by the Governing Body in March 1995. Its mandate included assessing actual needs for the revision of standards, examining the criteria that could be applied to revision and analysing the difficulties and inadequacies of the standard-setting system with a view to proposing effective practical measures to remedy the situation.[2] The Working Party has held 11 meetings so far and has formulated a significant number of recommendations, which have been unanimously approved by the Committee on Legal Issues and International Labour Standards (LILS) and the Governing Body. The Working Party has conducted case-by-case examinations of Conventions and Recommendations. To date, its work has resulted in decisions regarding 176 Conventions and 186 Recommendations by the Governing Body recommending a range of actions to be taken either by the Office or by member States.

9. In March 1996, the Office prepared a paper for the second meeting of the Working Party reviewing the Conventions that had either not entered into force, had been left dormant or had received only few ratifications. It analysed the status of Convention No. 41, in view especially of the number of denunciations of which it had been the subject, and suggested that the Working Party could propose that Convention No. 41 be left dormant, with immediate effect, while States parties to it could be invited to contemplate ratifying Convention No. 89 and its Protocol, and/or the Night Work Convention, 1990 (No. 171), and denouncing Convention No. 41 at the same time.[3] The Worker members did not support this idea without a more detailed examination of Convention No. 41, preferably in conjunction with Conventions Nos. 4 and 89. Following their objection, it was finally decided to postpone discussion of Convention No. 41 and request the Office to prepare a new document containing a comprehensive review of all three Conventions dealing with night work of women.[4]

10. In November 1996, the Working Party had before it a paper discussing the relevance and revision needs of Conventions Nos. 4, 41 and 89. The Office submitted that the Working Party could propose, in this regard, that:

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[2] The mandate of the Working Party is appended to GB.267/LILS/WP/PRS/2.

[3] See GB.265/LILS/WP/PRS/1, p. 14.

[4] See GB.265/LILS/5, para. 39, and GB.265/8/2, para. 24.

(a) Conventions Nos. 4 and 41 be shelved with immediate effect; (b) States parties to these Conventions be invited to consider the possibility of ratifying Convention No. 89, and its Protocol of 1990 or, where necessary, ratifying Convention No. 171 and denouncing Conventions Nos. 4 and 41 at the same time; (c) States parties to Convention No. 89 be invited to contemplate ratifying the Protocol of 1990 to that Convention or, where appropriate, ratifying Convention No. 171. The Employer members were in favour of shelving Conventions Nos. 4 and 41 with immediate effect and promoting the ratification of Convention No. 171, while the Worker members were against the shelving of the two Conventions and emphasized the need to promote the ratification of Convention No. 89. Finally, a consensus was reached on the proposal to promote the ratification of Convention No. 89 and its Protocol of 1990 or, where appropriate, of Convention No. 171, and to denounce, as appropriate, Conventions Nos. 4 and 41. It was also agreed that, in due course, the Working Party could consider shelving Conventions Nos. 4 and/or 41 and that member States would be asked to submit reports under article 19 of the Constitution with a view to enabling the Committee of Experts to conduct a General Survey on the subject.[5]

11. In approving the proposals of the Working Party, the Governing Body has thus resolved that Conventions Nos. 4 and 41 "retain their value on an interim basis for States party"[6] and that therefore the shelving of these Conventions is not called for under present conditions. At the same time, the Governing Body expressed concern over the fact that revising Conventions have not always been well ratified, leaving in force revised Conventions normally closed to ratification. It considered that under such circumstances it would be necessary to encourage the promotion of updated Conventions, while encouraging the denunciation of outdated ones, so as to avoid the piling up of complex and often conflicting legal obligations arising from the coexistence of overlapping instruments.[7]

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[5] See GB.267/LILS/4/2(Rev.), paras. 47-49, and GB.267/9/2, para. 14.

[6] See GB.270/LILS/WP/PRS/1/1, Appendix I, para. 21.

[7] In response to the Governing Body's decision to draw the attention of those States parties to Convention No. 4 which have also ratified Convention No. 41 or Convention No. 89 to examine the possibility of ratifying, as appropriate, Convention No. 89 and/or its Protocol and denouncing at the same time Convention No. 4, the Government of Burundi communicated its intention to ratify the 1990 Protocol and to denounce Convention No. 4; see GB.270/LILS/WP/PRS/1/1, para. 33.

The Committee's mandate and the specificity of the present survey

12. Before embarking on the technical analysis of the four instruments under review, the Committee considers it necessary to make some preliminary observations on the specificity of the present survey and how this affects the role of the Committee, together with the manner in which it intends to carry out its mandate. The subject of the present survey is a controversial one. While the issue of regulating women's access to night work has never been free of controversy, in the last 25 years it has generated an intense debate as for many it has come to symbolize one of the last legislative barriers before full equality of treatment at work between men and women can be achieved. In the opinion of a considerable number of governments, institutions and pressure groups, there is a fundamental contradiction between the willingness to provide differential treatment for female employees, simply because of their sex, and the commitment to equal opportunity and treatment for all workers. In fact, there is overwhelming evidence that at both the national and international level there is a marked shift on the part of governments from providing protection to providing equality.

13. The debate has put the Organization in a difficult position. Even though there is no question about the International Labour Organization's pioneering work in the field of women's advancement and equal rights, its reluctance to dispense with evidently obsolete instruments, as some would qualify the Conventions on night work of women, is sometimes perceived as perpetuating traditional and stereotypical assumptions about the role of women in the workplace and in society generally. The International Labour Organization would appear to many as the only body to "resist" gender mainstreaming[8] in retaining among its standards provisions prohibiting the access of women to particular occupations.

14. As analysed in greater detail below, the Office has sought on several occasions in the last 15 years to assess the willingness of its constituents to abandon protective legislation on women's night work and find the best policy option for future action in matters of night work regulation. These efforts, however, proved inconclusive. In 1984, the Office gave a legal opinion advising member States that they were bound to review their protective legislation in accordance with the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It further emphasized that following this review member States might need to denounce the relevant ILO Conventions at the appropriate time.[9] In 1985, a Conference resolution on equal opportunities and equal treatment for men and women in employment called on member States "to review periodically all protective legislation applying to women in the light of up-to-date scientific knowledge and technological changes" so that national laws would conform to international standards.[10] In 1986, the Committee in a comment in its General Report on the application of Conventions on the night work of women, referred to the growing difficulties it witnessed in the application of existing standards relating to this matter and drew the attention of the Governing Body to the importance of seeking a rapid solution.[11] In 1989, the Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment resolved that the Organization's task was to assist member States to carry out the review of protective legislation.[12] In 1990, the International Labour Conference adopted a Protocol substantially revising Convention No. 89, without however formally repealing the prohibition of night work for women in industry. At the same session, it adopted the Night Work Convention, 1990 (No. 171), calling for protection of both women and men working at night. A few years later, the Governing Body decided to promote the ratification of Convention No. 89 and its Protocol while qualifying Conventions Nos. 4 and 41 as obsolete and inviting States parties to consider denunciation. Finally, it might be emphasized that, since the adoption of the 1990 Protocol to Convention No. 89, there have been only three ratifications of the Protocol, but nine denunciations of Convention No. 89. This calls attention to the fact that the international labour Conventions on women's night work have been among the most widely denounced ILO instruments.

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[8] According to the ECOSOC definition of gender mainstreaming, "Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality"; see UN doc. A/52/3 of 18 Sep. 1997, Ch. IV, s. A, para. 4.

15. Under these circumstances, and bearing in mind the conclusions of the Working Party on Policy regarding the Revision of Standards, the Committee considers that the present survey is of particular significance. In undertaking the review of national laws and practice with regard to night work of women in industry, the Committee is called upon to give an opinion on the as yet unsettled issue, whether the ILO instruments dealing with this matter are still appropriate and respond to current needs. The Committee welcomes the opportunity afforded by this survey to consider and offer guidance on an issue which remains unresolved and which is both relevant and important, in the light of increasing globalization and growing recognition and acceptance of the principle of equality between the sexes.

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[9] See GB.228/24/1, para. 17.

[10] See ILC, 71st Session, 1985, *Record of Proceedings*, p. LXXX.

[11] See ILC, 72nd Session, 1986, Report III (Part 4A), p. 24.

[12] See *Special protective measures for women and equality of opportunity and treatment*, Documents considered at the Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment, MEPMW/1989/7, p. 80.

Status of ratification

16. Convention No. 4 came into force on 13 June 1921. As at 8 December 2000, it had been ratified by 59 member States and subsequently denounced by 29 member States.[13] Among the States for which Convention No. 4 is still in force, 22 are also parties to one of the revising Conventions Nos. 41 or 89.[14] Among the latest ratifications were those of *Angola*, *Bangladesh* and *Guinea-Bissau* registered in 1976, 1972 and 1977, respectively. Despite having been revised, this Convention has not been closed to further ratifications. This is the case since it was adopted prior to the introduction of the final Articles providing for the closure of a Convention to further ratifications upon the acceptance of an instrument revising that Convention. Among the States who have so far denounced Convention No. 4, 21 subsequently ratified Conventions No. 41 and/or No. 89. Among the most recent denunciations were those of *Argentina*, *Peru* and *Portugal* registered in 1992, 1997 and 1993, respectively. Regarding the reasons invoked for denunciation, *Peru* relied on its constitutional provision prohibiting discrimination based on origin, race, sex, language, religion, opinion, economic situation, or any other ground. *Portugal* referred to the need to

[13] The following 30 member States are still bound by Convention No. 4: Afghanistan, Angola, Austria, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Colombia, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Gabon, Guinea-Bissau, India, Italy, Lao People's Democratic Republic, Lithuania, Madagascar, Mali, Morocco, Nicaragua, Niger, Pakistan, Rwanda, Senegal, Spain and Togo. The Convention has so far been denounced by the following States: Albania, Argentina, Belgium, Brazil, Bulgaria, Cameroon, Chile, Congo, France, Greece, Guinea, Hungary, Ireland, Luxembourg, Malta, Mauritania, Myanmar, Netherlands, Peru, Portugal, Romania, South Africa, Sri Lanka, Switzerland, Tunisia, United Kingdom, Uruguay, Venezuela and Yugoslavia (this refers to the former Socialist Federal Republic of Yugoslavia. The Government of the Federal Republic of Yugoslavia, which joined the International Labour Organization on 24 November 2000, has not yet notified its decision concerning the Conventions previously ratified by the former Socialist Federal Republic of Yugoslavia. As from the date of accession of the Federal Republic of Yugoslavia to ILO membership, the former Socialist Federal Republic of Yugoslavia was deleted from the list of ILO member States).

[14] To date, the following 12 member States are bound by both Convention No. 4 and Convention No. 41: Afghanistan, Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Gabon, Madagascar, Mali, Morocco, Niger and Togo. Furthermore, the following ten member States are still bound by both Convention No. 4 and Convention No. 89: Angola, Austria, Bangladesh, Burundi, Democratic Republic of the Congo, Guinea-Bissau, India, Pakistan, Rwanda, and Senegal. The following eight member States are only bound by Convention No. 4: Cambodia, Colombia, Cuba, Italy, Lao People's Democratic Republic, Lithuania, Nicaragua and Spain.

harmonize internal legislation with European Community law, while *Argentina* argued that the limitation of the hours of work of women had become a genuine obstacle to the actual integration of women into the labour market. Finally, three States *(Cuba, Italy, Spain)* are in the rather unusual position of having denounced Convention No. 89, but not Convention No. 4; they are thus still bound by the provisions of the earlier instrument.

17. Convention No. 41 came into force on 22 November 1936. As at 8 December 2000, it had been ratified by 38 member States, and subsequently denounced by 22 member States.[15] Following the entry into force of Convention No. 89 in 1951, Convention No. 41 was closed to any further ratification. It has to be pointed out, however, that most of the current ratifications of Convention No. 41, which date back to 1960, are in fact declarations of continuation of application of the Convention made by newly independent States in respect of which the Convention was already in force prior to independence. The latest ratification was that of *Suriname* which was registered in 1976. To date, there have been 18 "automatic" denunciations as a result of the ratification of the revising Convention No. 89. Among the four "pure" denunciations of Convention No. 41, *Peru* invoked in 1997 its constitutional provision recognizing equal rights to all citizens and prohibiting discrimination based on sex, while *Hungary* in 1977 considered that the exclusion of women from night work was discriminatory especially in so far as wage levels and promotion at work were concerned.

18. Convention No. 89 came into force on 27 February 1951. As at 8 December 2000, it had been ratified by 65 member States and subsequently denounced by 15 member States.[16] The latest ratifications are those of *Bosnia and Herzegovina, Czech Republic* and *Slovakia,* all registered in 1993. Among the denunciations, nine were registered in the period 1991-92, mostly by EU Member States, following the judgement of the European Court of Justice in the

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[15] The following 16 member States are still bound by Convention No. 41: Afghanistan, Argentina, Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Estonia, Gabon, Madagascar, Mali, Morocco, Niger, Suriname, Togo and Venezuela. The Convention has so far been denounced by the following States: Belgium, Brazil, Congo, Egypt, France, Greece, Guinea, Hungary, India, Iraq, Ireland, Mauritania, Myanmar, Netherlands, New Zealand, Pakistan, Peru, Senegal, South Africa, Sri Lanka, Switzerland and the United Kingdom.

[16] The following 50 member States are still bound by Convention No. 89: Algeria, Angola, Austria, Bahrain, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Burundi, Cameroon, Comoros, Congo, Costa Rica, Cyprus, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominican Republic, Egypt, Ghana, Guatemala, Guinea, Guinea-Bissau, India, Iraq, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malawi, Mauritania, Pakistan, Panama, Paraguay, Philippines, Romania, Rwanda, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Swaziland, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Tunisia, United Arab Emirates, Yugoslavia (see footnote 13 above) and Zambia. The Convention has so far been denounced by the following States: Belgium, Cuba, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, New Zealand, Portugal, Spain, Sri Lanka, Switzerland and Uruguay.

Stoeckel case, which drew attention to the incompatibility of the prohibition of night work for women with the European Council Directive 76/207/EEC on equal treatment. It should be noted that, with the exception of the Governments of *Switzerland* which invoked economic necessity and *Cuba*, which offered no explanation for denunciation, all other denouncing States have justified their decision by arguing that maintaining the prohibition on the night work of women in industry constituted an inadmissible discrimination against working women and that the concern for protection which originally inspired the Convention was no longer relevant. As regards the Protocol of 1990 to Convention No. 89, it has so far received three ratifications.[17] Detailed information on the status of ratification/denunciation of the instruments under review is contained in Appendix I of this survey.

Available information

19. For this survey, the Committee relied on the information communicated under article 19 of the ILO Constitution by 109 States regarding the position of their law and practice in relation to the matters dealt with in Conventions Nos. 4, 41, 89 and the 1990 Protocol to Convention No. 89. Moreover, the Committee drew upon the reports submitted under articles 22 and 35 of the Constitution by those member States which have ratified one or more of the Conventions under review. Finally, the Committee has taken account of observations and comments submitted by employers' and workers' organizations on the practical application of the different provisions of the Conventions and the Protocol in their countries.[18]

20. The Committee commends the large number of governments which have communicated reports on these instruments: of the 173 member States concerned, 109 submitted reports. The Committee is somewhat concerned, however, about the summary and often incomplete information contained in some of the reports received. In some cases, reports contained mere references to legislative provisions without any information on the practical application of the Conventions under review while, in some other cases, Members which are no longer bound by any of the instruments examined here considered it unnecessary to report on their law and practice in matters of night work regulation. The Committee recalls that regular and thorough reporting is an obligation inherent to membership and also of critical importance to the functioning of the Organization's supervisory bodies. The Committee regrets also the small number of workers' and employers' organizations which seized the opportunity offered by article 23 of the ILO Constitution in order to express their views on the concrete application of national laws and regulations dealing with the subject matter of this survey. The Committee reiterates that the fulfilment of its mandate in a meaningful manner is dependent on obtaining across-the-board information and thus on the active cooperation not only of governments but also of social partners.

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[17] Cyprus, Czech Republic, Tunisia. Under the terms of Art. 4 of the Protocol, a Member may ratify the Protocol at the same time or at any time after its ratification of the Convention. However, a Member may not ratify the Protocol only without ratifying Convention No. 89. The ratification of the Protocol takes effect 12 months after its registration.

[18] *Austria:* Federal Chamber of Labour; *Barbados:* Barbados Workers' Union (BWU); *Brazil:* National Confederation of Transport (CNT), General Confederation of Workers; *Canada:* Canadian Employers Council; *Finland:* Central Organization of Finnish Trade Unions (SAK); *Republic of Korea:* Korean Confederation of Trade Unions (KCTU), Korean Employers' Federation (KEF); *Mauritius:* Mauritius Employers' Federation (MEF); *Mexico:* Confederation of Mexican Workers (CTM); *Namibia:* Namibian Employers' Federation (NEF); *New Zealand:* New Zealand Council of Trade Unions (CTU), New Zealand Employers' Federation; *Portugal:* General Confederation of Portuguese Workers; *Sri Lanka:* Employers' Federation of Ceylon, Lanka Jathika Estate Workers' Union; *Turkey:* Turkish Confederation of Employer Associations (TISK), Confederation of Turkish Trade Unions (TÜRK-IS).

Outline

21. The General Survey is divided into five chapters. Chapter 1 describes the factual context in which the standards set forth in the Conventions under review are assumed to operate. Chapter 2 looks into the historical evolution of the standards and examines their rationale and scope of application. Chapter 3 includes a compilation of national laws, rules and regulations related to night work and female labour, and attempts to identify whether, and to what extent, prevailing patterns and trends comply with the standards reflected in the Conventions under consideration. Chapter 4 discusses the validity of standards on night work of women in light of the ongoing controversy as to the compatibility of those standards with the principles of non-discrimination and gender equality. Chapter 5 contains the Committee's observations as to the ratification prospects of the four instruments under review, while in the concluding section of the survey the Committee offers some final thoughts on the strengths and weaknesses and continued relevance of the ILO instruments concerning the night work of women in industry.

CHAPTER I

THE CONTEXT: FEMALE LABOUR, NIGHT WORK AND GLOBAL INDUSTRIALIZATION

I. Women workers' protection: Aims, problems and trends

22. Since 1950, women's participation in the labour market has increased steadily, the overall economic activity rate of women, for the age group 20-54, now approaching 70 per cent as opposed to slightly above 50 per cent in 1950.[1] Although still lower than the male labour force participation rate, the striking feature of women's labour force participation has been its sharp increase. Various factors are generally given to explain this. One is decreasing fertility rates, due in part to increasing educational levels and in part to the widespread introduction of female contraceptive methods in this period. In nearly all countries, as women have fewer children, their labour force participation rates increase. Another factor is the transition from manufacturing industries to services industries as economies advance. Traditionally, women have been disproportionately employed in the services sector and, in many countries, employment opportunities in this sector have increased greatly. A third factor is the globalization of markets. As the advanced market economies move out of manufacturing and, in particular, low-skilled manufacturing, these jobs move to lower cost economies. Thus, employment opportunities for both men and women in developing economies may increase. Women who were not previously in paid employment now find jobs in light manufacturing plants and in the assembly phase of manufacturing. A fourth factor is technological innovation, especially in telecommunications, which has made it much faster and cheaper to transfer data across borders. Thus, women in developing countries and in countries remote from the advanced market economies now may find employment opportunities in data processing, credit card billing centres and call centres which no longer have to be located in the client's home country. It should be noted, however, that whilst the percentage of women working has increased greatly, this has not necessarily meant any improvement in the position of women relative to men at work, nor to any improvement in their working conditions. As a United Nations study concludes, what the term "feminization" of labour really means when seen from the perspective of growing "flexibilization" and "casualization" of employment is that "female labour is still easily available when needed and dispensable when it is not".[2]

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[1] See *1999 World Survey on the Role of Women in Development – Globalization, Gender and Work*, United Nations, 1999, p. 8. See also *Key Indicators of the Labour Market 1999*, ILO, 1999, pp. 17-50.

23. Social patterns formed when most women did not work outside the home continue to persist even in the face of drastically changed circumstances. Traditionally, the man was the breadwinner who engaged in paid employment outside the home, and the woman was the person engaging in unpaid labour at home, in washing, cleaning, cooking, etc. She was also traditionally regarded as the person with primary responsibility for the care of children and other family members. Studies demonstrate that, when both husband and wife work full time, household and family responsibilities still fall disproportionately on the woman. With the increase in single parent households, working women in that situation carry the entire burden of the family. As more women work, the burden of two "jobs", one paid and one unpaid at home, which has always confronted working women, has received more media attention.

24. The abovementioned facts and trends can be interpreted in two quite different ways. Many would argue that night work per se has little, if anything, to do with women's disadvantaged position in the labour market, but that being prohibited from working at night may, in fact, contribute to that disadvantage.[3]

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[2] See *1999 World Survey on the Role of Women in Development – Globalization, Gender and Work*, United Nations, 1999. In addition, according to United Nations figures, more than half of women's total work time is spent on unpaid work; see *The world's women 2000 – Trends and statistics*, United Nations, 2000, p. 126. In the words of an analyst, "the trends of flexibility and feminization combined to pose an historical challenge to social and labour market policy […] The trend is toward greater insecurity and greater flexibility. Reversing that trend, which is associated with labour flexibility, is the most important labour market and social policy challenge of all"; see G. Standing, "Global feminization through flexible labour: A theme revisited", in *World Development*, Vol. 27, 1999, p. 600. The liberalization of world trade has also created unprecedented numbers of migrant workers and women make up a growing proportion of them. According to a United Nations study, the annual growth rate of migrant female workers was higher than that of men from 1985 to 1990 in four of six global regions; see *1999 World Survey on the Role of Women in Development – Globalization, Gender and Work*, United Nations, 1999, p. 31. The contemporary trends in international migration, including the substantial increase in female migrants, are also reviewed in the Committee's 1999 General Survey on migrant workers, paras. 5-23. See also *Women workers – Reaching for the sky*, ICFTU, May 2000.

[3] For instance, some labour economists point out that, when night work prohibitions took effect, many women were removed from their jobs because they were no longer able to work rotating shifts. They were then reassigned to jobs that did not require night work. Over time, these jobs effectively became "female" jobs and, in an era before the concept of equal pay, they were remunerated on the lower female wage scales. In some cases, the introduction of night work prohibitions increased the extent of occupational sex segregation. Today it is generally agreed that occupational sex segregation is one of the primary causes of the gender wage gap. Current data indicate that, in virtually all countries, women still earn only 50-80 per cent of men's wages; see

They would call for intensified efforts to eradicate gender-based discrimination in labour markets as the most effective way of improving the conditions of working women. Others, cognizant of the burden on working women, especially on those in lower skilled jobs or who have family responsibilities, believe that there is no way at present to eliminate the double workload these women carry, a burden made even heavier by the demands of night work. They would call for retaining protection for these women. The challenge is to elaborate sound consensual policies striking a balance between measures which limit women's freedom of choice regarding working time and reduce their ability to compete with men in the labour market, and measures aimed at providing protection tailored narrowly to meet a demonstrated need for protection.

II. Facing the realities of night work: Risks and benefits

25. According to ILO studies, night workers in the industrialized countries account for 8-15 per cent of the economically active population.[4] It is generally agreed that night work tends to increase in line with industrialization and urbanization. There are as yet no studies to determine whether night work is more common in sectors where telecommunications advances and the globalization of markets make it possible for those working on computers to work outside the office and during non-standard hours. In industrial settings, available data show that the rate of participation of women in night work is generally much below the male participation rate, but of course this reflects a situation where legal prohibitions on women working at night impact upon the data. It is not possible to estimate what the rate would be if the prohibition on women working at night was removed completely.

26. The reasons given for night work in industrial settings are technical, economic and social. In certain industries, such as oil refining, steel and paper-making, the production process itself demands that it be continuous, as it is impossible to have the production processes cease only for a 12-hour period. Economic motives are often involved.[5] The more capital-intensive the industry, the more costly it is to have expensive equipment lie idle. In addition, there is greater reluctance to meet an increase in demand for the product by adding on more equipment because it is so expensive. Employers sometimes state that they

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The world's women 2000 – Trends and statistics, United Nations, 2000, p. 132. See also *Worlds apart – Women and the global economy*, ICFTU, Apr. 1998.

[4] See J. Carpentier and P. Cazamian, *Night work – Its effects on the health and welfare of the worker*, 1977, p. 1. See also ILC, 76th Session, 1989, Report V(1), p. 1. Similar statistics for developing countries are scarce. Likewise, undocumented workers often work at night, but no reliable statistics exist on this.

[5] See, for instance, P.J. Sloane, "Economic aspects of shift and night work in industrialized market economies", in *International Labour Review*, Vol. 117, 1978, pp. 129-142.

would prefer to increase the utilization of the equipment by increasing the hours worked by their employees. Social factors now are increasingly important as individuals are more and more seeking greatly extended availability in many services, such as retail shops and food markets. There has always been a community demand for round-the-clock availability of certain public services, such as those relating to public safety (police and fire) and health care. Today, however, the range of services desired in the evening and throughout the night has gone far beyond necessary services.

27. From the beginning of the industrial revolution, one reason for night work has been the fact that, if machinery is kept in use throughout the day and night, the cost of producing each unit is less.[6] Where competition between producers is intense, some employers may assert that long hours and night work are necessary. This is so even in labour-intensive industries, such as garment and shoe manufacturing, where considerations relating to expensive equipment and high technology processes do not apply. Today, recourse to irregular work-hours and night work is explained by some by pointing to compelling economic imperatives and concerns about job creation, export growth and the need for cost competitiveness. Workers, facing the threat of widespread unemployment, often have no choice but to accept the reality of "unsocial hours" as the price of having a job. As we enter the new century, one of the most conspicuous examples of very long working hours is found in export processing zones, or EPZs,[7] established in numerous developing countries in furtherance of a country's export-oriented development strategy. Among the typical characteristics of EPZs are the high proportion of women workers (predominantly young female workers performing low-wage, low-skill assembly work),[8] extensive use of overtime work, job insecurity and a low rate of unionization. Such a situation is ripe for socially problematic employment conditions. The concern is that, in many EPZs, the setting of unrealistically high production targets often results in night work and substantial overtime being viewed as necessary over protracted periods. Cognizant of this, many governments have stated that they cannot abide by the international standards embodied in several Conventions, including those prohibiting night work for women in industry.[9] The Committee on numerous occasions has addressed the issues of working conditions in EPZs and has repeatedly emphasized the importance it attaches to the need for EPZ-operating countries to improve working conditions and to ensure compliance with international labour standards relating to trade union and collective bargaining rights.[10] In this respect, the Committee recalls the conclusions of the Tripartite Meeting of Export Processing Zone-operating Countries which was held in October 1998 as part of an action programme on social and labour issues in EPZs. On this occasion, the Meeting called on EPZ enterprises to make special efforts to ensure, inter alia, that measures exist to help women workers combine work and family responsibilities such as the "limitation of excessive working hours and night work, the provision of child-care facilities and the allocation of hours or days of leave to take care of the children".[11]

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[6] In an ILO study, the production cost advantage of routinely employing women on night work has been estimated to range up to 30 per cent; see *Economic and social effects of multinational enterprises in export processing zones*, ILO/UNCTC, 1988, p. 101.

[7] The number of countries with EPZs increased from ten in 1970 to 53 in 1986. An estimated 27 million people currently work in some 845 EPZs around the world; see *Economic and social effects of multinational enterprises in export processing zones*, ILO/UNCTC, 1988, and *Labour and social issues relating to export processing zones*, ILO, 1998, p. 3. The largest number are in North America (320) and Asia (225), with the number of EPZs rising in developing regions such as the Caribbean, Central America and the Middle East.

[8] According to a 1988 survey, the female participation rate in the EPZ labour force varied from 60-80 per cent in the Republic of Korea, Mauritius, Mexico, Philippines and Singapore to 80-90 per cent in Barbados, India, Indonesia, Jamaica, Malaysia, Sri Lanka and Tunisia; see *Economic and social effects of multinational enterprises in export processing zones*, ILO/UNCTC, 1988, pp. 60-61.

28. The physiological, psychological and medical effects of night work have been the subject of numerous studies over the years.[12] It is generally agreed that, although the effects of night work vary considerably, depending on the worker's age, economic situation and family condition, regular night work principally causes abnormal fatigue and is liable to affect in many ways the health of the worker, whether male or female.[13] Over-fatigue appears to be due to sleep disturbances and also to the fact that night workers have to work in a state of "nocturnal deactivation" and to sleep in a state of "diurnal reactivation" which provokes a discordance of phase between two circadian rhythms – the biological rhythm of the body's activation and deactivation and the artificial rhythm of activity at work and rest.[14] Severe sleepiness and tiredness experienced by night workers normally causes reduced alertness and consequently increases the risk of accidents, while on rare occasions it may even cause the so-called "night shift paralysis" – an unusual phenomenon observed among air traffic controllers and night nurses whereby the lack of sleep renders a person unable to react to stimuli which would normally generate a reaction. There is now much investigative evidence showing that fatigue due to night work increases incidents and accidents in industrial operations and nuclear power plants and that it contributes to virtually all modes of transportation disasters, including rail, marine, aviation and motor accidents.[15] The performance of night work is also shown to be related to digestive (gastro-intestinal troubles, particularly ulcers) and nervous disorders which may be aggravated by lack of appropriate food on the shift, or by excessive consumption of coffee and tobacco during the night and by sleeping pills used during the day. There are also studies which indicate an increased risk of cardiovascular diseases which is mainly attributed to the eating habits of shift/night workers.[16] Recent studies on shift work and reproductive health suggest that night work and irregular work-hours may also be associated with elevated reproductive risks.

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[9] See A.T. Romero, "Labour standards and export processing zones: Situation and pressures for change", in *Development Policy Review*, Vol. 13, 1995, p. 256.

[10] In its last report, the Committee, examining reports on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), observed that discriminatory practices against women such as the imposition of pregnancy tests as a condition of employment continue to occur in EPZs and qualified such practices as "both offensive and contrary to human dignity"; see ILC, 88th Session, 2000, Report III (Part 1A), p. 339. On another occasion, the Committee referred to the tendency of some EPZ-operating countries to exclude in law or in practice these zones from the application of national labour legislation, and noted that "there appears to remain an important disparity between the *de jure* and de facto application of labour standards in EPZs"; see ILC, 87th Session, 1999, Report III (Part 1A), p. 28. For the Committee's latest observations on the application of Conventions Nos. 87 and 98 by certain EPZ-operating countries, see ILC, 88th Session, 2000, Report III (Part 1A), pp. 187, 189, 192, 201, 248 and 258; ILC, 87th Session, 1999, Report III (Part 1A), pp. 213, 232, 256, 265, 286, 344 and 348; ILC, 86th Session, 1998, Report III (Part 1A), pp. 180, 185, 227, 233, 251, 252 and 264. See also the Committee's General Survey on freedom of association and collective bargaining, ILC, 81st Session, 1994, Report III (Part 4B), paras. 60 and 169, pp. 29 and 74.

[11] See GB.273/STM/8/1, para. 29, p. 16. The Meeting further considered that women workers working late faced increased risks of harassment and violence and that special measures should be taken to ensure adequate transport and security.

[12] For an overview of the health effects of sleep deprivation and abnormal work hours, see K. Kogi, "Sleep deprivation", in *Encyclopaedia of Occupational Health and Safety*, 4th edition, ILO, 1998, Vol. 1, pp. 29.52-29.55, and P. Knauth, "Hours of work", ibid., Vol. 2, pp. 43.2-43.15. See also T. Akerstedt, *Wide awake at odd hours – Shift work, time zones and burning the midnight oil*, Swedish Council for Work Life Research, 1996, and European Foundation for the Improvement of Living and Working Conditions, *The Effects of Shiftwork on Health, Social and Family Life*, 1981.

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[13] Early works on night work mostly referred to the "inevitable physiological deficits due to the lack of sleep and sunlight"; see, for instance, Josephine Goldmark, *Fatigue and efficiency*, 1912, p. 265. In 1946, a survey of night work practices during the Second World War concluded that "fatigue is a contributory cause in many illnesses ranging from the common cold to nervous ailments, while investigations in industry show that long hours and night work decrease output and increase accidents, lost time and illnesses"; see *Health and efficiency of workers as affected by long hours and night work – Experience of World War II*, State of New York, Department of Labor, 1946, p. 21.

[14] The human circadian system is believed to be able to adjust to a change of an hour or two a day at most. When a person works a night shift it results in a sudden eight-hour change which is like flying a transatlantic flight, while the case of a worker on a rotating shift schedule of a week of days, nights and then evenings is comparable to taking a tour around the world every three weeks. In this connection, there is an ongoing debate whether quickly rotating shift systems are preferable to slowly rotating ones, but also whether permanent night workers adjust better to night work and day sleep; see, for instance, P. Knauth, "The design of shift systems", in *Ergonomics*, Vol. 36, 1993, pp. 15-28.

[15] See M. Härmä, "New work times are here – Are we ready?", in *Scandinavian Journal of Work, Environment & Health*, Vol. 24, 1998, Supplement 3, p. 4.

[16] According to a recent survey, shiftworkers have an excess risk of coronary heart disease of 30-50 per cent in comparison to day workers; see L. Tenkanen et al., "Shift work, occupation and coronary heart disease over 6 years of follow-up in the Helsinki Heart Study", in *Scandinavian Journal of Work, Environment & Health*, Vol. 23, 1997, p. 264.

such as spontaneous abortion, pre-term birth and lowered birthweight.[77] The disturbance of family and social life adds to the psychological stress suffered by night workers with more or less serious or lasting consequences for their family relations, life style and social adjustment.[78] Surveys show that, in only one-third of the workers, there is perfect tolerance of night work and rotating hours of work throughout their working life. Approximately 20 per cent of shiftworkers are needed to move to day work during their first year of employment due to disturbances in their circadian rhythm, with accompanying sleep disturbances, difficulties in social life, and various stress reactions. As an ILO study on the subject concluded, "it appears to be well established that, from both the physiological point of view and the family and social point of view, night work is harmful to the large majority of workers and is, therefore, to be deprecated".[79]

III. Banning women's night work and gender equality: The ILO perspective

29. The debate about the restriction of access to night employment for women has always been defined by two opposing views. There are those who contend that prohibiting night work for women and promoting equality of opportunity and treatment between men and women are mutually exclusive goals. Others contend that, far from being a vehicle for preserving gender inequality, limiting women's access to night work has been motivated by concerns related to protection of women and that such protection was most needed in countries where inequality and exploitation of women workers remain a fact of life.

30. There has been a progressive reinterpretation of gender-specific roles in marriage, family responsibilities and working life. The Convention on workers with family responsibilities (No. 156), concerning equal opportunities and equal treatment for men and women workers, recognizes that both men and women have family responsibilities; and it refers expressly to the Preamble of the UN Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States parties are "aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women". This reinterpretation has called for the transformation of the international rules regulating women's access to employment. While these rules may have aimed previously at protecting women against excessively arduous working conditions, they now need to be refocused to better reflect present-day principles of non-discrimination at work and gender equality. There is growing support for the view that, with the exception of standards and benefits related to maternity protection, all other special protective measures are contrary to the objectives of equal opportunities and equal treatment of men and women. An ILO study on the effects of night work on the worker's health has recognized that "sex plays no role, so that from the medical point of view there is no justification for protecting only women workers except in so far as their function of reproduction is concerned because of the risks to the children".[20] According to the findings of recent shift work research, there appear to be no physiological differences between the genders in shift work tolerance and adaptation to night work.[21] The fact that some women may tolerate night work less well than men does not relate to biological differences, a fact not recognized by the reformers who proposed the night working ban as protection for women. Rather, some women may tolerate it less well than men because of the double burden they carry due to childcare and household responsibilities, which gives them less undisturbed rest time in their non-working hours. The view that these women need protection, and that the form of protection should be their removal from night work, reflects the traditional role that society still requires of women in some quarters.[22]

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[77] See T. Nurminen, "Shift work and reproductive health", in *Scandinavian Journal of Work, Environment & Health*, Vol. 24, 1998, Supplement 3, p. 33.

[78] See D. Bunnage, "Study on the consequences of shiftwork on social and family life", and A. Maasen, "The family life of shiftworkers and the school career of their children", in European Foundation for the Improvement of Living and Working Conditions, *The effects of shiftwork on health, social and family life*, 1981.

[79] See J. Carpentier and P. Cazamian, *Night work – Its effects on the health and welfare of the worker*, 1977, p. 7.

31. The need to achieve gender equality has gained significant impetus in the last 20 years through the action of international bodies such as the United Nations and the European Union. The 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women, the European Council's Equal Treatment Directive of 1976, as well as the jurisprudence of the European Court of Justice which built on this latter instrument, spearheaded the idea that protective measures had to be reviewed in the light of developments in scientific and technological knowledge and in society generally, with a view to revising, repealing, supplementing, extending or retaining such measures. In the same vein, the International Labour Conference in its 1985 resolution on equal opportunities and equal treatment for men and women in employment, called for measures at the national level "to review all protective legislation applying to women workers and in the light of up-to-date scientific knowledge and technological changes and to revise, supplement, extend, retain or repeal such legislation according to national circumstances".[23] Following up on this resolution, the 1989 ILO Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment considered that "special protective measures for women alone in the case of dangerous, arduous and unhealthy work are incompatible with the principle of equality of opportunity and treatment unless they arise from women's biological condition" and recommended that, in so far as future ILO action is concerned, "there should be a periodic review of protective instruments in order to determine whether their provisions are still adequate in the light of experience acquired since their adoption and to keep them up to date in the light of scientific and technical knowledge and social progress".[24] In line with the 1985 resolution and based on the findings of the 1989 Meeting of Experts, the Office in its last comprehensive review of women's issues affirmed that "the task is for the ILO to assist tripartite groups to conduct such reviews, based on general principles or guidelines that have emerged".[25]

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[20] ibid., p. 41.

[21] See T. Hakola, "Circadian adjustment of men and women to night work", in *Scandinavian Journal of Work, Environment & Health*, Vol. 22, 1996, p. 137; M. Härmä, "Individual differences in tolerance to shiftwork: A review", in *Ergonomics*, Vol. 36, 1993, p. 105; F. Nachreiner, "Individual and social determinants of shiftwork tolerance", in *Scandinavian Journal of Work, Environment & Health*, Vol. 24, 1998, Supplement 3, p. 36.

[22] See H. Oginska et al., "Gender, ageing, and shiftwork tolerance", in *Ergonomics*, Vol. 36, 1993, p. 167.

32. The Office had stressed in a 1989 report that, "the subject is complex. Its analysis involves conflicting values as well as competing legal doctrines and international labour standards on preventing discrimination in employment and ensuring the safety and health of workers. The ILO seeks to rationalize the various interests and doctrines into a coherent policy that ensures equal opportunity and at the same time prevents the deterioration of working conditions".[26] The standards adopted in 1990 in the form of the Protocol to Convention No. 89 and the Night Work Convention No. 171 were the result of an attempt to resolve these competing interests. The Protocol served to ease prohibitions where some form of restriction aimed only at women was considered to be still valid. Convention No. 171 provided measures of protection for all night workers including many of those aspects of special concern to

[23] See ILC, 71st Session, 1985, *Record of Proceedings*, p. LXXX. It is also noteworthy that in 1984, in response to concerns raised over the compatibility of certain ILO Conventions with the UN Convention on the Elimination of All Forms of Discrimination Against Women, the Office opined that "States having ratified both the UN Convention and an ILO Convention [on night or underground work for women] are bound to review their protective legislation periodically in accordance with Art. 11, para. 3, of the Convention. They do not have to repeal this legislation – or denounce the corresponding Convention – if this is not deemed necessary for the time being", see GB.228/24/1, para. 17.

[24] See *Special protective measures for women and equality of opportunity and treatment*, Documents considered at the Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment, MEPMW/1989/7, pp. 79-80.

[25] See *The changing role of women in the economy: Employment and social issues*, GB.261/ESP/2/2, para. 51.

[26] See *Special protective measures for women and equality of opportunity and treatment*, Documents considered at the Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment, MEPMW/1989/7, p. 1.

women. Article 3 provided that specific measures are required by the nature of night work in order to protect workers' health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement and adequate compensation. It also provided for special measures of maternity protection and safety.

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CHAPTER 2

ANATOMY OF A PROHIBITION: ILO STANDARDS IN RELATION TO NIGHT WORK OF WOMEN IN INDUSTRY

33. The most modern instruments dealing specifically with women's night work in industry are the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990; this Convention revised Convention No. 41 of 1934 which was itself a revised version of Convention No. 4 of 1919. All three revisions were designed to make the standards on night work by women more flexible. Convention No. 171, as has already been seen, lays down standards of protection for all night workers, but its provisions fall outside the purview of this survey.

I. Historical development

1. The origins: The 1906 Berne Convention

34. The origins of the international regulation of night work of women can be traced back to private initiatives such as those of Robert Owen in 1818 or of Daniel Le Grand in 1840. Both appealed for international regulation of the working day and international protection of labour. The first Socialist Internationale which took place at the Geneva Congress of 1866 passed a resolution against the employment of women at night, while the 1887 Vienna meeting of the International Congress of Hygiene and Demography endorsed a resolution to the effect that "the limitation of working hours, and above all the prohibition of night work must be demanded on grounds both of health and morals".[1] The rising protest of the working class and the movement for the need of international action on social issues eventually led to the Berlin International Labour Conference convened at the initiative of German Emperor Wilhelm II in 1890. Despite its ambitious programme, only a series of resolutions, among which was one against the night work of women, were issued during the Conference.

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[1] Cited in M.D. Hopkins, *The employment of women at night*, US Department of Labor, Bulletin of the Women's Bureau, No. 64, 1928, p. 20.

35. Yet, the preparatory work for the elaboration of the first international and legally binding instrument abolishing night work for women in industry was laid by the International Association for Labour Legislation which was founded in Paris in 1900. At its constitutive assembly held in Basel in 1901, the Association instructed the International Labour Office[2] to undertake a study as to the actual state and effects of the night work of women in the various countries as well as to the results obtained in the industries in which it had been suppressed.[3] Two years later, in 1903, the Association requested the Swiss Government to take steps for the summoning of an international conference for the purpose of reaching agreement and adopting uniform rules on the first two subjects which had been identified as most suitable for international regulation, i.e. the prohibition of the night employment of women in industry and the use of white phosphorus in the manufacture of matches. The two subjects appear to have been retained for both practical and political reasons. The principle of the prohibition of night work for women was already laid down in the national legislation of most European countries and therefore the acceptance of an international convention was expected to raise little or no difficulty.[4] In the words of Raoul Jay, the question was chosen as "one of the most urgent, most important, and most easily solved" of industrial problems, ripe for solution.[5] The principal motive, however, behind the prohibition of night employment of women was the desire to equalize the costs of production and make uniform the conditions of industrial competition between States by inducing those States which had not already prohibited night work for women to enact legislation to this effect. It is known, for instance, that in matters of night employment of women, *Belgium* at that time lagged behind the neighbouring countries of *France* and *Germany*, and that both of those countries had a strong interest in equalizing the conditions between Belgian factories and their own.[6] According to a memorandum prepared by the International Association for Labour Legislation, an international convention prohibiting night work for women irrespective of age was expected to provide protection for some 350,000 female employees in those countries where a prohibition of night work already existed but applied only to young persons (e.g. *Spain* prohibited the night work of females under the age of 14 only; *Luxembourg* and *Hungary* under 16; *Denmark*, *Finland*, *Norway* and *Sweden* under 18; *Portugal* and *Belgium* under 21). Furthermore, it was estimated that as many as 1 million women workers would be concerned if account was taken of the countries without any limitation to night work such as *Japan* and, to a certain extent, the *United States*.[7]

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[2] According to its statutes, the Association had for its object, among others, the organization of an international labour office which had for its mission the publication, in French, German and English, of a periodical collection of the labour legislation in all countries, or to lend its cooperation to such a publication.

[3] The results of this inquiry were presented at the Association's second general meeting held in Cologne in 1902 when the following resolution was carried: "the condition of legislation on women's night work in most States with important industries, and as is proved by the reports published by the various sections, the influence of such legislation on the general conditions of industry, on the various special undertakings, and on workpeople, justify the abolition in full, on principle, of night work for women. The International Commission therefore instructs a committee to inquire into the means of introducing this general interdiction and how the exceptions still existing might be gradually suppressed"; cited in *Memorial explanatory of the reasons for an international prohibition of night work for women issued by the Board of the International Association for Labour Legislation*, 1904, p. 1.

[4] Night employment of women in industry was first regulated in England in 1844, in Switzerland in 1877, in Austria in 1885, in Germany in 1891 and in France in 1892. For an overview of national legislation in certain European countries, see M. Ansiaux, *Travail de nuit des ouvrières de l'industrie dans les pays étrangers (France, Suisse, Grande-Bretagne, Autriche, Allemagne)*, 1898.

[5] See R. Jay, *La protection légale des travailleurs*, 1909; cited in M.D. Hopkins, *The employment of women at night*, US Department of Labor, Bulletin of the Women's Bureau, No. 64, 1928, p. 16.

36. The prohibition of night work for women was justified as a measure of public health designed to decrease the mortality rate of women and children, and improve the physical and moral well-being of women as a result of longer night rest and more relaxed occupation with housekeeping tasks.[8] Humanitarian considerations were also invoked in support of the need to protect women against exploitation and intolerable working conditions.[9] Drawing upon medical studies and statistical evidence, it was argued that industrial work of women at night was linked to different pathologies and a general predisposition to chronic anaemia and tuberculosis due to deprivation of sunlight, malnutrition, inhalation of gases, poor ventilation or exposure to extreme temperatures, humidity, etc.[10] Night work was considered as immoral and anti-social since it disrupted family life and often induced workers to alcoholism. The economic necessity for industrial production at night was also questioned: in most cases, it was argued, night work was introduced for fear of competition and led inevitably to overproduction and hence to unemployment.[11]

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[6] Quoted in M. Delevingne, "The pre-war history of international labor legislation" in J.T. Shotwell (ed.): *The origins of the International Labor Organization*, 1934, Vol. I, p. 34.

[7] See *Memorial explanatory of the reasons for an international prohibition of night work for women issued by the Board of the International Association for Labour Legislation*, 1904, p. 6.

[8] ibid., p. 9.

[9] In his opening address to the Conference, the Swiss Federal Councillor Deucher referred to the "codification des régles humanitaires destinées à adoucir le sort d'une partie des victimes des combats économiques" and invited the participants to "modifier par un arrangement entre pays la situation sanitaire et sociale de ceux-là que la guerre industrielle, souvent aussi impitoyable que la guerre armée, a blessés et affaiblis par l'excès des fatigues et l'insalubrité du travail, car ils ont besoin de ménagements et d'un traitement qui, grâce au repos et aux précautions hygiéniques, raffermissent leur santé physique et morale et par là celle de leurs proches"; see *Procès-verbal de la séance d'ouverture*, 17 Sep. 1906, p. 7.

[10] For interesting accounts on the working conditions of women employed in industry at the turn of the century, see A.M. Anderson, *Women in the factory – An administrative adventure 1893 to 1921*, 1922, pp. 22-57; J. Mazel, *L'interdiction du travail de nuit des femmes dans la législation française*, 1899, pp. 1-32; A. Chazal, *L'interdiction du travail de nuit des femmes dans l'industrie française*, 1902, pp. 7-27; M. Hirsch, *L'interdiction du travail de nuit*, 1901, pp. 1-16; L. Bonneff, *La vie tragique des travailleurs*, 1907, pp. 3-33.

37. The work of the Berne Conference proceeded in two stages. A technical meeting of experts met in 1905 following which a set of draft provisions was adopted. These were to form the basis of the text of the two international conventions finalized and formally adopted a year later at a diplomatic conference.[12] In its first article, the draft agreement on night work of women introduced a sweeping prohibition of industrial night work for all women without exception. Article 1 further designated as subject to the prohibition all industrial enterprises employing more than ten workers while the use of power-driven machinery was not considered to be a satisfactory criterion to distinguish small or family enterprises from large industries. By "industrial enterprise", the draft text was meant to cover mines, quarries and manufacturing establishments to the exclusion of purely agricultural or commercial undertakings. However, more specific delimitation of these categories was left to the legislation of each State. Article 2 set the legal notion of night rest for women. It was meant to be of 11 hours' duration, including in all cases the interval between 10 p.m. and 5 a.m. Such flexible definition of the term "night" was a real novelty, designed to render the agreement acceptable to all countries independently from their respective climatic conditions. In the remaining articles, the draft agreement provided for several exceptions to the prohibition of women's night work. In the case of signatories without national laws regulating night work of adult females, night rest could be limited to ten hours for a transitional period of three years. Moreover, the prohibition would not be applicable in cases of extreme necessity, when required to prevent the loss of perishable materials, while for certain industries influenced by seasons the length of nocturnal rest might be reduced to ten hours during 60 days in the year. Furthermore, a period of ten years' grace was accorded to those industries which would be particularly affected by the application of the prohibition such as the Belgian wool-combing and weaving factories at Verviers where some 1,300 women were then employed. At the diplomatic conference of 1906, it was decided that the Convention on the prohibition of night work for women would be of an initial duration of ten years, and that, upon the expiration of the ten-year term, it could be denounced from year to year. Finally, the Convention was intended to be an "open treaty" allowing States non-signatories to adhere to it by depositing an instrument to that effect with the Swiss Government.

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[11] See G. Alfassa, *Le travail de nuit des femmes*, 1904, p. 7.

[12] The work of the Berne Conference is summarized in B.E. Lowe, *The international protection of labor – International Labor Organization, history and law*, 1935, pp. 112-131, and L.-E. Troclet, *Législation sociale internationale*, 1952, pp. 218-244.

38. The signature of the first international labour treaty was hailed as a great historic event and "one of the most glorious pages in the social history of nations".[13] Its significance lay primarily in the fact that, for the first time, international law and diplomacy did not regulate issues related to war and commerce but focused on labour conditions and human welfare. It is interesting to note, however, that already, at the time of the Berne Conference, some voices were raised to question the acceptability of an international agreement limiting the access of women to night employment on grounds of sex-based discrimination; for instance, ratification of the 1906 Berne Convention was rejected the first time it was presented to the Swedish Parliament; *Denmark*, which had only signed with reservations, never ratified the Convention due to opposition by the women's movement.[14]

39. The Convention which has been called the "first article of the International Labour Code" entered into force in January 1912, and at the time of the Washington Conference 11 States were bound by its provisions (*Austria, Belgium, France, Germany, Great Britain, Italy, Netherlands, Portugal, Spain, Sweden* and *Switzerland*). Following ratification, even countries that had earlier abolished the night work of women introduced changes to harmonize their legislation fully with the provisions of the Convention. The *Netherlands* and *Germany*, for instance, lengthened the period of night rest by one hour and required for the first time 11 hours of uninterrupted rest. *France* restricted the customary practice of "*veillées*", or late overtime, to a single trade and set the limit of overtime to 10 instead of 11 p.m. Even in countries regulating women's night work for the first time after the Berne Convention, there was a marked trend towards enactment of progressive legislation. *Belgium*, for instance, amended earlier legislation to apply the prohibition to all industrial undertakings irrespective of size. The Convention was also made applicable to numerous colonies, possessions or protectorates of signatory States, such as *Algeria, Ceylon, Madagascar, New Zealand, Nigeria* and *Tunisia*. Even though the prohibition of night work for women appeared hardly relevant for those non-industrialized territories, the extension of means of protection was expected to prevent industrial abuses.[15]

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[13] See M. Caté, *La Convention de Berne de 1906*, 1911, p. 96; cited in M.D. Hopkins, *The employment of women at night*, US Department of Labor, Bulletin of the Women's Bureau, No. 64, 1928, p. 17.

[14] Quoted in E. Mahaim, "The historical and social importance of international labor legislation", in J.T. Shotwell (ed.): *The origins of the International Labor Organization*, 1934, Vol. I, p. 10. For a historical approach to the debate about the benefits or negative effects of special protective labour legislation to prohibit women from working at night, see U. Wikander, "Some kept the flag of feminist demands waving – Debates at international congresses on protecting women workers", in Wikander et al. (eds.), *Protecting women – Labor legislation in Europe, the United States, and Australia, 1880-1920*, 1995, pp. 29-62.

[15] As at 8 December 2000, the Berne Convention of 1906 was still in force for the following States: Algeria, Austria, Belgium, Denmark, France, Hungary, Italy, Luxembourg, Morocco,

2. The 1919 Washington Conference and ILO Convention No. 4

40. Pursuant to Article 424 of the Treaty of Versailles of 28 June 1919, the first meeting of the International Labour Conference was to take place in October 1919, while according to an annex to Part XIII of the Treaty, the Conference was to meet at Washington and its agenda was to include, inter alia, the following points: "4(3) Women's employment: [...] (b) during the night; [...] (5) Extension and application of the international conventions adopted at Berne in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches". Although the original intention was to undertake a formal revision of the Convention of 1906, it was soon realized that, for constitutional and practical reasons, a new instrument concerning the employment of women at night had to be put forth to supersede the Berne Convention.[16] The main provisions of the earlier text were left untouched; even though in most countries regulations prohibiting night work for women were relaxed during the First World War to allow female labour to work mainly in munitions factories, it was felt that the principle of the legal restriction of night hours in industrial work for women still enjoyed wide acceptance and had to be reaffirmed. As the reporter of the Commission on employment of women at night and the extension and application of the Berne Convention of 1906 told the Conference, "the point of view that night work for women is undesirable, that its prohibition should be as far as possible universal, has not been weakened by war experience, and we had no opposition in our committee to the request for support of the principle of the Convention of Berne".[17] Thus, only limited amendments were introduced to reflect the changes which had taken place in industry since the adoption of the Berne Convention, and the social conditions of workers in the aftermath of the First World War. The clause in Article 1 by which the Convention applied only to industrial undertakings of more than ten employees was found to be unwarranted and was removed. The special provisions of Article 8, which were exclusively designed to protect the interests of specific countries and secure their ratification, were also omitted. The definition of the term "industrial undertaking" was redrafted in a more detailed manner for the sake of consistency with other draft Conventions submitted to the Conference. Finally, new provisions on ratification, notification and denunciation were inserted in order to be used as standard clauses in future Conventions.

Poland, Portugal, Spain and Tunisia. It was denounced by Switzerland in 1972, by the Netherlands in 1973, and by Germany in 1992.

[16] It should be noted that as initially proposed by the Organizing Committee, the Conference should recommend adhesion to the Convention to all States Members of the League; see ILC, First Session, 1919, *Record of Proceedings*, p. 246.

[17] ibid., p. 102.

41. In submitting the draft text to the Conference, the Commission on employment of women at night expressed the view that the new Convention "would constitute a valuable advance in the protection of the health of women workers, and, through them, of their children, and that of the general population in each country, by making the prohibition of night work for women engaged in industry more complete and more effective than it has ever yet been".[18] Much like *Denmark* and *Sweden*, which had objected to the adoption of the Berne Convention as contrary to the principle of equality between men and women, *Norway* voiced similar reservations at the Washington Conference with respect to Convention No. 4. As the representative of *Norway* put it, "I am against special protective laws for women except for pregnant women and women nursing children under 1 year of age, because I believe that we are furthering the cause of good labour laws most by working toward the prohibition of absolutely unnecessary night work for all".[19]

42. The main principle of Convention No. 4 was extended to women employed in agriculture by a Recommendation adopted at the Third Session of the Conference in 1921. This Recommendation provides for a rest period for women of not less than nine hours during the night. It also provides that the rest period should be compatible with women's physical necessities, and whenever it is possible the resting hours ought to be consecutive. This Recommendation is much less stringent than the 1919 Convention which provides for a nightly rest of 11 consecutive hours. The greater elasticity of this Recommendation was due in large part to consideration of the dependence of agricultural labour upon weather conditions, and the impossibility of working in the middle of the day in some countries.

43. Less than ten years after its adoption, the principle codified in the Washington Convention of 1919 had been endorsed by 36 countries and met with almost universal application. The nations which had abolished the night work of women in industry covered the entire European continent, with the exception of *Albania* and *Turkey*; *India* and *Japan* in Asia; and *South Africa* or such dependencies as *Algeria, Tunis, Uganda* and northern *Nigeria* in Africa. The prohibition also applied to the British dominions, *New Zealand*, all the Australian states, and all but two of the Canadian provinces. Moreover, it spread to *Argentina, Bolivia, Brazil, Chile* and *Mexico*, while in Central America, *Costa Rica, El Salvador, Guatemala, Honduras* and *Nicaragua* had adopted a regional instrument including the prohibition of women's night work.

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[18] ibid., p. 246.

[19] ibid., p. 103.

3. The partial revision in 1934: ILO Convention No. 41

44. In its 1928 report on the application of Convention No. 4, the Government of the *United Kingdom* referred to Article 3 of the Convention and considered that this clause must have the effect of debarring women altogether from entering upon certain employments in which continuous working was necessary. In this connection was cited the case of female engineers who were precluded from holding certain posts in electrical power undertakings because they were prohibited from working at night. Based on the observations of the British Government, the Governing Body decided in June 1930 to hold consultations with other governments on the desirability of undertaking the revision of Article 3 of Convention No. 4. As a result of these consultations, and despite the greatly diverging views expressed as to the meaning and scope of the prohibition in Article 3, the Governing Body decided in January 1931 to place on the agenda of the Conference the revision of the Convention by means of the insertion of a clause to the effect that it "does not apply to persons holding positions of supervision or management". A revised text of the Convention was considered at the 15th Session of the Conference in May 1931 but failed to secure the necessary two-thirds majority for adoption.

45. On a more general level, the very principle of special protection being accorded to women workers had come under attack by women's organizations on the ground that it was not in harmony with the principle of absolute equality between men and women. At its Congress in Paris in 1926, for instance, the *International Alliance of Women for Suffrage and Equal Citizenship* adopted a resolution to the effect that no regulations different from those applying to men should be imposed on women.[20] Several publicists argued along the same lines. Writing in 1928, Blainey noted: "... although the average woman worker is young, and has by this fact, and by her helplessness and lack of organisation, needed special protection in the past, it does not appear that under modern conditions so much of that special protection is now required. Again and again inquiry shows that it is the juvenile and adolescent who requires protection, while what the adult woman wants is opportunity to show what she can do, and above all adequate wages to keep her fit to do it. The tendency to continue to class 'women and young persons' together is thus a mistake. However it may have been justified in the past, it is based on too great a disregard of real facts to be of value at present".[21] Within the ranks of the women's movement, however, there were also those who recognized the usefulness of special protective legislation for female workers. Refuting the arguments put forward by an association entitled *Open Door International*, one author maintained that "to combat special legislation for the protection of female workers is not opening doors, but tearing a safety net. This net has been woven by dint of long and painful toil, and the meshes should rather be made smaller, and not wider, in order to protect female workers from the prodigal exploitation of their womanhood and motherhood".[22]

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[20] See *International regulation of women's work History of the work for women accomplished by the International Labour Organisation*, 1930, pp. 12-13.

[21] See J. Blainey, *The woman worker and restrictive legislation*, 1928, p. 83.

46. In view of the situation, the British Government proposed to the Governing Body that an authoritative ruling should be obtained from the Permanent Court of International Justice on the question as to whether Convention No. 4 applied to women employed in industrial undertakings covered by the Convention who held positions of supervision or management and were not ordinarily engaged in manual work. In the event, the Governing Body decided to follow this course and in April 1932 requested the Council of the League of Nations to submit to the Court a request for an advisory opinion. The question upon which the Court was asked to advise was worded as follows: "Does the Convention concerning employment of women during the night, adopted in 1919 by the International Labour Conference, apply in the industrial undertakings covered by the said Convention, to women who hold positions of supervision or management and are not ordinarily engaged in manual work?".

47. The Court answered this question in the affirmative basing its reasoning principally on the natural sense and ordinary meaning of the terms of the Convention. More concretely, the Court found that "the wording of Article 3, considered by itself, gives rise to no difficulty; it is general in its terms and free from ambiguity or obscurity. It prohibits the employment during the night in industrial establishments of women without distinction of age. Taken by itself, it necessarily applies to the categories of women contemplated by the question submitted to the Court".[23] The Court also observed that if the intention was to exclude women holding positions of supervision or management from the operation of the Convention, a specific clause to that effect would have been inserted as in the very similar case of the Hours of Work (Industry) Convention, 1919 (No. 1), which specifically provides in Article 2(a) that "the provisions of this Convention shall not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity".

48. Furthermore, the Court gave some consideration to the argument that, Convention No. 4 being a labour Convention adopted in the framework of Part XIII of the Treaty of Versailles, it was intended to apply only to manual workers since it was the improvement of the lot of manual workers which was the principal objective of Part XIII. The Court noted, in this respect, that it was not "disposed to regard the sphere of activity of the International Labour

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[22] See E. Lüders, "The effects of German labour legislation on employment possibilities for women", in *International Labour Review*, Vol. 20, 1929, p. 396.

[23] See *Interpretation of the Convention of 1919 Concerning Employment of Women During the Night*, Advisory Opinion, P.C.I.J. Series A/B, Fasc. No. 50, 15 Nov. 1932, p. 373.

Organisation as circumscribed so closely, in respect of the persons with which it was to concern itself, as to raise any presumption that a labour Convention must be interpreted as being restricted in its operation to manual workers, unless a contrary intention appears".[24] In response to another argument, according to which at the time of the adoption of the Convention very few women actually held positions of supervision or management in industrial undertakings and that therefore the application of the Convention to women occupying such posts was never considered, the Court pointed out that "the mere fact that, at the time when the Convention on night work of women was concluded, certain facts or situations, which the terms of the Convention in their ordinary meaning are wide enough to cover, were not thought of, does not justify interpreting those of its provisions which are general in scope otherwise than in accordance with their terms".[25]

49. Following the advisory opinion of the Permanent Court of International Justice confirming the all-inclusive character of the prohibition of night work for women as contained in Article 3 of Convention No. 4, the Governing Body, after consulting the governments, placed on the agenda of the 18th Session the question of revising the Convention in respect of two points: first, the exclusion from the prohibition of night work of "persons holding responsible posts of management who are not ordinarily engaged in manual work", and secondly, the substitution, in certain specially defined circumstances, of the period 11 p.m. to 6 a.m. for the period 10 p.m. to 5 a.m. in the definition of the term "night" included in the Convention.

50. As regards the first point, most Government representatives and the Employer members supported the Office's draft stressing that, following the advisory opinion of the Permanent Court but also recognizing the increasing number of women with university degrees or professional training qualifying them for managerial posts, the revision of the Convention had been rendered still more necessary than before. In the view of the Danish Government representative, if it was desirable to prohibit night work, the prohibition should apply equally and without discrimination to both sexes. A similar view was expressed by the Worker members in whose opinion the progress of social legislation should be in the direction of the complete prohibition of night work in industry for both sexes.[26]

51. The second point related to the definition of the period to be regarded as night. According to Article 2 of Convention No. 4, night signified "a period of at least eleven consecutive hours, including the interval between eleven o'clock in the evening and five o'clock in the morning". The proposal for revision placed on the agenda by the Governing Body was the addition of a provision to the effect that "the competent authorities may, in view of exceptional circumstances affecting the workers in a particular industry or area and after consultation with the employers' and workers' organisations concerned, decide that for those workers the interval between eleven o'clock in the evening and six o'clock in the morning shall be substituted for the interval between ten o'clock in the evening and five o'clock in the morning".[27] This proposal originated with the Belgian Government which referred to the case of women workers in the textile industry at Verviers preferring to work later at night than starting work at such an early hour, when means of transport were lacking. It was argued that more flexibility was needed to facilitate the application of the Convention in different countries without however affecting the principle of the prohibition of night work as such or the overall length of the night period. The problem of workers living at some distance from their place of employment and for whom it would be generally impossible owing to transport conditions to begin the morning shift in two-shift undertakings earlier than 6 a.m. was also raised by the Austrian and Finnish Governments in almost identical terms.[28] Several other Government representatives *(Italy, Japan, Poland)* and the Employer members were also in favour of the proposed amendment. Only the Worker members opposed the Office's draft arguing that the circumstances invoked by the Belgian Government were only of a local character and were not sufficient grounds for modifying an international Convention.

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[24] ibid., p. 374.

[25] ibid., p. 377.

[26] A summary of the Committee discussions is in ILC, 18th Session, 1934, *Record of Proceedings*, pp. 650-654. See also "The Eighteenth Session of the Conference", in *International Labour Review*, Vol. 30 (Sep. 1934), p. 311.

52. As a result, the Conference adopted Convention No. 41 which revises Convention No. 4 in the following two respects: first, in accordance with its Article 2, paragraph 2, "where there are exceptional circumstances affecting the workers employed in a particular industry or area, the competent authority may, after consultation with the employers' and workers' organisations concerned, decide that in the case of women employed in that industry or area, the interval between eleven o'clock in the evening and six o'clock in the morning may be substituted for the interval between ten o'clock in the evening and five o'clock in the morning". Secondly, under the terms of Article 8, "this Convention does not apply to women holding responsible positions of management who are not ordinarily engaged in manual work".

4. The quest for flexibility: ILO Convention No. 89

53. The question of the partial revision of Conventions Nos. 4 and 41 concerning employment of women during the night had been placed by the

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[27] See Partial Revision of the Convention Concerning Employment of Women During the Night, ILC, 18th Session, 1934, Report VII, p. 5.

[28] ibid., pp. 10, 14.

Governing Body on the agenda of the 31st Session of the Conference on the basis of a ten-yearly report on the working of these Conventions prepared by the Office in accordance with a decision taken by the Governing Body in March 1947. The principal aim of the revision as proposed by the British Government was to render more flexible the term "night" in order to facilitate the working of the double day-shift system as an important feature in the post-war economy of numerous countries. Other possible points of amendment included the broadening of the exception applying to women in managerial positions and the addition of a clause permitting the suspension of the prohibition of night work for women when in cases of serious emergency the national interest demands it.

54. In their observations on the question of placing the revision of Conventions Nos. 4 and 41 on th. agenda of the Conference, several governments including those of *Canada, France* and the *United States* had pointed out that the present-day tendency was to start work later in the morning (7 or 8 a.m.) and stop later in the evening (11 p.m. or 12 a.m.).[29] The discussions in the Conference Committee confirmed the general agreement in principle that it was necessary to allow for a greater flexibility in the application of the Convention and to safeguard the principle of consultation of employers' and workers' organizations where exceptions were considered. As the Worker member of the *United States* pointed out, experience had proved that in certain countries such as the *United Kingdom* and the *United States*, whenever employed women could choose between an early morning start and a late evening finish, they preferred in general the latter alternative for reasons of transport and of procurement of meals.[30] A few governments, however, including *Argentina, India* and *Uruguay* expressed their dissatisfaction with the proposed revision as it lowered in their view the level of protection offered to women and did not take adequately into account the social and economic conditions prevailing in the non-industrialized world.[31] The new Convention, as finally adopted by the Conference, provides for a night rest period of at least 11 consecutive hours falling between 10 p.m. and 7 a.m. The competent authority may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings but has to consult the employers' and workers' organizations concerned before prescribing an interval beginning after 11 p.m. Thus, while maintaining the length of the night rest (11 hours) as well as that of the barred period (seven hours), the Convention allows more flexibility in the arrangement of the latter.

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[29] See Partial Revision of the Convention (No. 4) Concerning Employment of Women During the Night (1919) and of the Convention (No. 41) Concerning Employment of Women During the Night (revised 1934), ILC, 31st Session, 1948, Report IX, pp. 9-15.

[30] A summary of the Committee discussions is in ILC, 31st Session, 1948, *Record of Proceedings*, pp. 494-499. See also "The Thirty-First Session of the Conference", in *International Labour Review*, Vol. 58 (Oct. 1948), p. 465.

[31] See ILC, 31st Session, 1948, *Record of Proceedings*, pp. 218-219.

55. In its new Article 5, the Convention further provides for the possibility of suspension of the prohibition of night work for women "after consultation with the employers' and workers' organisations concerned when in case of serious emergency the national interest demands it", it being understood that a serious emergency could only be invoked in exceptional circumstances, such as in time of war, and that it should in no case allow for an export drive. The rationale for the suspension clause was found in the experience during the Second World War when prohibitions as regards the night work of women were relaxed in several belligerent and neutral countries. The revised Convention provides that any "such suspension shall be notified by the government concerned to the Director-General of the International Labour Office in its annual report on the application of the Convention". The scope of application of the Convention was also revised, Article 8 now excluding from the prohibition of night work not only women holding responsible positions of a managerial but also of a technical character as well as "women employed in health and welfare services who are not ordinarily engaged in manual work". Finally, one of the issues the Conference failed to resolve was the revision of the definition of "industrial undertakings" to include the transport industry in the Convention. After prolonged discussions it was decided that no sufficient information was available as to the extent and nature of the employment of women in transport and, as a result, the Conference adopted a resolution referring the question to the Governing Body "for examination with a view to appropriate action".[32]

5. Reconciling special protection with equality of treatment: The 1990 Protocol to Convention No. 89

56. The question of a possible revision of Convention No. 89, in order to adapt the protection enjoyed by women workers to changed conditions, was first raised in 1971. In fact, a proposal to this effect was made by the Government of *Switzerland* which argued that Convention No. 89 "is now out of date, if only because – like all the earlier instruments – it applies solely to industrial undertakings, whereas there is no corresponding instrument forbidding night work by women in non-industrial undertakings, with the exception of agriculture".[33] The Swiss Government also pointed out that "nowadays women are better suited than men for certain types of industrial work, e.g. in the textiles, electronic and watchmaking industries" and that "in practice the prohibition of night work can lead to discrimination against women". Following the Swiss proposal, the Governing Body instructed the Director-General to prepare a report on the working of the Convention with a view to examining in due course the desirability of placing the question of its revision in whole or in part on the agenda of a forthcoming Conference session. The report, which contained an international comparative analysis reviewing the extent of application of the provisions of Conventions Nos. 4, 41 and 89, concluded as follows: "... while the question of the advisability of the reconsideration of national and international standards relating to the employment of women at night has been the subject of considerable discussion, no generally agreed conclusions have yet emerged as to the solution which should be adopted. One school of thought would seem to favour a general removal of restrictions on the employment of women, including the prohibition of night work, as a means of eliminating obstacles in the way of equal employment opportunities. In other quarters, more limited relaxation of existing restrictions appears to be regarded as sufficient. A further approach, which has already been adopted in several countries, would consist of a general regulation of night work, applicable without distinction to men and women workers. It is among workers' organisations that the greatest concern has been expressed lest changes in existing standards should carry with them undesirable social consequences".[34]

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[32] Ibid., p. 545.

[33] See GB.185/SC/3/2, p. 3.

57. The report was subsequently communicated to all member States for observations and the replies received were submitted to the Governing Body at its 191st (November 1973) Session.[35] At the same session, the Governing Body asked the Director-General "to explore more fully the various issues raised by the replies received" so as to permit the formulation of proposals for future action.[36] The new report, submitted to the Governing Body at its 198th Session (November 1975), confirmed the considerable diversity of the views of governments, and employers' and workers' organizations on the action to be taken with respect to Convention No. 89 and concluded that "although there is support for revision of the present standards there is not sufficiently broad agreement on either the purpose or scope of such revision or on the scope of any possible new standards, since opinions range from one extreme to another".[37] In view of the complexity of the issue, it was decided to convene a tripartite advisory meeting (a) to examine all aspects of the question of night work in the light of the work already carried out and other available information, and (b) to formulate suggestions as to future ILO action in this regard.

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[34] See *Draft report of the Governing Body of the International Labour Office on the working of the Convention concerning Night Work of Women Employed in Industry (Revised 1948) (No. 89) and of the corresponding Conventions of 1934 and 1919 (Nos. 41 and 4)*, D.5., 1973, p. 30.

[35] See GB.191/SC/1/1.

[36] See GB.191/16/25, para. 10.

[37] See GB.198/SC/1/1, p. 7. The report summarized the findings of two studies on the economic, social, physical, psychological and medical aspects of night work and listed the most common criticisms of existing standards on night work of women as being their discriminatory character and incompatibility with the principle of equality of opportunity for male and female workers; the inapplicability of the distinction between branches of economic activity as work in industry has in many cases ceased to be arduous and may even be less arduous than in other branches; the failure of present standards to reflect modern conditions and their tendency to hamper industrialization; and the lack of evidence showing that night work is any more harmful to women than to men.

58. The Tripartite Advisory Meeting on Night Work was held in October 1978 but marked little progress as the views expressed by the Worker and Employer participants remained irreconcilable and no unanimity could be reached on the desirability of adopting new standards on night work. For the Worker participants, existing restrictions should not be lifted in the name of equality between men and women but rather the protection enjoyed by women should be extended to men, while an active policy was needed for humanizing night work wherever it remained indispensable. In contrast, the Employer participants strongly opposed the idea of new standard-setting action and emphasized that night work remained in both industrialized and developing countries an effective instrument for promoting employment, increasing the productivity of capital investments and accelerating economic growth. As regards Government participants, their majority expressed a preference for the adoption of new international standards on night work although there were differences of opinion about the form and scope of application of the new standards.[38]

59. In 1986, in its General Report on the application of the Conventions on the night work of women, the Committee "noted a trend of opinion among a number of governments to the effect that the prohibition of night work for women would be a discrimination against them and would also be contrary to present-day thinking on the role of women in society, and found that the application of the Conventions in question was running into difficulties in a certain number of countries".[39] Noting also that the Conventions on the night work of women are among those for which there have been the greatest number of denunciations not accompanied by the ratification of a revising instrument, the Committee drew the attention of the Governing Body to the importance of seeking a rapid solution, following which the Governing Body decided in

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[38] The discussions are summarized in the Report of the Tripartite Advisory Meeting to the Governing Body, GB.208/8/4. The same divergence of opinion is reflected in a series of articles reviewing special protective legislation for women in specific countries; see, for instance, R. Nielson, "Special protective legislation for women in the Nordic countries", in *International Labour Review*, Vol. 119 (1980), pp. 39-49; A.P. Biryukova, "Special protective legislation and equality of opportunity for women workers in the USSR", ibid., pp. 51-65; E. Gömöri, "Special protective legislation and equality of opportunity for women in Hungary", ibid., pp. 67-77; R.S. Ratner, "The paradox of protection: Maximum hours legislation in the United States", ibid., pp. 185-198; H.B. Connell, "Special protective legislation and equality of employment opportunity for women in Australia", ibid., pp. 199-216; M. Jiménez Butragueno, "Protective legislation and equal opportunity and treatment for women in Spain", in *International Labour Review*, Vol. 121 (1982), pp. 185-198; T. Nakanishi, "Equality or protection? Protective legislation for women in Japan", in *International Labour Review*, Vol. 122 (1983), pp. 609-621.

[39] See ILC, 72nd Session, 1986, Report III (Part 4A), p. 24.

November 1987 to place on the agenda of the 76th Session (1989) of the Conference the question of night work with a view to partly revising Convention No. 89 on the one hand, and on the other to adopt new standards for night work in general. The prohibition of night work of women in industry had become increasingly controversial, especially in light of the growing awareness that such a prohibition was not easy to reconcile with the principle of equality of treatment and non-discrimination between men and women in employment.

60. Indeed, since 1975, there had been a marked shift in emphasis from special protection to the promotion of equality in the standard-setting activities of the ILO regarding women. Standards which set special protective measures, for reasons not connected with maternity and women's reproductive function, underwent a critical review since they were increasingly seen as an obstacle to the full integration of women in economic life and as a means to perpetuate traditional notions about women's role and abilities. The *Declaration on Equality of Opportunity and Treatment for Women Workers*, for instance, which was adopted by the International Labour Conference in 1975 on the occasion of the International Women's Year, called for such a review. Article 9 of the Declaration, after recalling that the protection of women at work should be an integral part of the efforts aimed at continuous promotion and improvement of living and working conditions of all employees, provided that women should be protected "on the same basis and with the same standards of protection as men".[40] Similarly, the *resolution on equal opportunities and equal treatment for men and women in employment*, adopted by the Conference in 1985, recommended that all protective legislation applying to women should be reviewed in the light of up-to-date scientific knowledge and technical changes and that it should be revised, supplemented, extended, retained or repealed, according to national circumstances. As for ILO standards, it requested that protective instruments, such as Convention No. 89, be reviewed periodically to determine whether their provisions were still adequate and appropriate in the light of experience acquired since their adoption and of scientific and technical information and social progress.[41]

61. Following the adoption of the resolution on equal opportunities and equal treatment for men and women in employment, the Governing Body decided at its 242nd Session (March 1989) to convene a *Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment* in order to review the situation and trends at the national level concerning protective measures for women workers, assess such measures in the light of the objective of promoting equal opportunities and treatment in employment for men and women workers, as well as to review ILO activities in the field and make proposals for future action. The Meeting of Experts, which

[40] See ILC, 60th Session, 1975, *Record of Proceedings*, p. 991.

[41] See ILC, 71st Session, 1985, *Record of Proceedings*, pp. LXXX, LXXXIV.

was held in October 1989, reviewed all ILO standards aimed either at protecting women's reproductive and maternal functions or at protecting women generally because of their sex, with the exception of the prohibition of night work for women, in view of the Conference discussions in June 1989 on the question of a possible revision of Convention No. 89. The technical background paper which was submitted to the Meeting of Experts as a basis for its discussion defined protective measures as including "legislation and regulations in the field of working conditions and occupational safety and health which exclude women from certain occupations or activities, ostensibly for their protection, or which stipulate that women are entitled to special working conditions or facilities not required for men" and put forward the view that "the ILO policy with respect to these provisions seeks a justifiable balance between the ILO's strong commitment to equality of opportunity and treatment, as evidenced in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the 1975 resolution and Declaration, and the 1985 resolution, and, on the other hand, the mandate to ensure that the health and safety of all workers is protected, taking into account the reproductive function of both men and women".[42]

62. In adopting its conclusions and recommendations, the Meeting of Experts stressed that measures should be taken in each country to review all protective legislation applying to women and that "this review should aim at establishing a coherent policy that would ensure equal opportunities for women while not adversely affecting their working conditions and environment and quality of life". The Meeting cautioned, however, that "the review of protective measures for women is but one means of action to ensure equal opportunity and treatment between men and women in employment". It further emphasized that, in deciding whether to repeal or revise protective measures, account should be taken of existing working conditions, the existence of effective enforcement authority, the availability of appropriate training and control measures and the importance of cultural and religious patterns. As regards future ILO action, the Meeting recommended that "there should be a periodic review of protective instruments in order to determine whether their provisions are still adequate in the light of experience acquired since their adoption and to keep them up to date in the light of scientific and technical knowledge and social progress".[43]

63. The Office's approach was to propose the adoption of a Protocol revising Convention No. 89 by allowing exemptions from the prohibition of night work and variations in the duration of the night period through agreements between the employers and workers. This solution, it was hoped, would satisfy those countries seeking greater flexibility while allowing Convention No. 89 to continue to receive ratifications. The Conference discussions confirmed, however, that the issue of the prohibition of night work for women had grown divisive and polemical to such a point that the idea of a partial revision of Convention No. 89 could hardly match the conflicting expectations of governments and employers' and workers' organizations. Many Government members expressed the view that Convention No. 89 was contrary to the principle of equality between men and women, that the prohibition of night work could only hamper the professional and career prospects of women and thus it violated Convention No. 111 concerning discrimination in respect of employment and occupation. Announcing their intention to abstain from the Conference Committee discussion and the vote for the adoption of a Protocol, some other Government members stated that, with the exception of maternity protection, there was no reason for differential treatment between men and women. In the opinion of the Employer members, Convention No. 89 could no longer be justified on any grounds and had to be repealed or otherwise disposed of; as for the prohibition of night work, they thought it was inherently discriminatory and an impediment to economic and social progress. In contrast, the Worker members considered that women still needed protection as they continued to suffer from discrimination and that therefore Convention No. 89 had still an important role to play as the problems which had prompted its adoption persisted. In this connection, it was necessary to draft the Protocol so as to give new vigour to the Convention rather than weakening its protective function. Concerning the apparent contradiction between Convention No. 89 and Convention No. 111, the Worker members argued that the prohibition of night work helped to prevent the exploitation of women as cheap labour and to ease their double load due to work and family responsibilities. Thus, it might not be considered discriminatory except in the very few countries where the principle of equality of opportunity and treatment was fully applied.[44]

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[42] See *Special protective measures for women and equality of opportunity and treatment*, Documents considered at the Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment, MEPMW/1989/7, pp. 1 and 55.

[43] ibid., pp. 78-80.

64. Besides the Protocol to Convention No. 89, the Conference went on to adopt a new night work Convention (No. 171) and Recommendation (No. 178) broadening the scope of regulatory measures to apply to both genders and to nearly all occupations. Contrary to traditional definitions of night work linked to a minimum period of specific night hours, the new standards focus on night workers who perform a substantial number of hours of night work exceeding a specified limit. According to Convention No. 171, the range of measures required for improving the quality of working life of night workers include shorter hours of work, sufficient rest periods, occupational safety and health, including health assessment, first-aid facilities and appropriate medical advice, appropriate social services, transfer to day work, maternity protection, and consultation about shift schedules. The new night work Convention is intended to apply to all employed persons, both men and women, except those employed in agriculture, stock raising, fishing, maritime transport, and inland navigation. By shifting the emphasis from a specific category of workers and sector of economic activity to the safety and health protection of night workers irrespective of gender in all branches and occupations, Convention No. 171 was designed to reflect the changing perceptions as to the hazards of night work and a new flexible approach to the problems of shift work organization.[45]

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[44] The Conference discussions are summarized in ILC, 76th Session, 1989, *Record of Proceedings*, pp. 30/1-30/5, 30/30-30/35, and ILC, 77th Session, 1990, *Record of Proceedings*, pp. 26/21-26/26, 31/1-31/9.

6. Criticism of ILO standards on night work of women: The role of the United Nations and the European Union

65. At this juncture, reference should be made to the actions of international organizations such as the United Nations or the European Union in support of equality of opportunity and treatment between men and women, in so far as this action influenced decisively the law and practice of States parties to Convention No. 89. By resolution 2263 (XXII) of 7 November 1967, the UN General Assembly proclaimed the *Declaration on the Elimination of Discrimination against Women*, spelling out the principle that "discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity" (article 1) and urging all States to "abolish existing laws, customs, regulations and practices which are discriminatory against women" (article 2). The Declaration also reaffirmed the obligation to ensure to women the right "to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement" (article 10, paragraph 1(a)) specifying however that "measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory" (article 10, paragraph 3).[46]

66. The *European Social Charter*, which was opened for signature in October 1961 and came into force in February 1965, lays down standards governing the main human rights in working life as well as social protection and the protection of particular groups such as working women. As the counterpart of the European Convention on Human Rights which secures civil and political rights, the Charter secures social and economic rights. It provides for 19 fundamental rights to which the Additional Protocol of 1988, which came into force in September 1992, added another four. Article 8 of the Charter refers to the right of employed women to protection and reads in part: "With a view to ensuring the effective exercise to the right of employed women to protection, the Contracting Parties undertake: [...] 4. (a) to regulate the employment of women workers on night work in industrial employment; (b) to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature".[47] Even though Article 8, paragraph 4(a), does not formally prohibit night work for women but only requires that States regulate the employment of women at night, it was criticized by some as discriminatory in view of the growing tendency to make no distinction between women and men and to offer special protection to women only as expectant or nursing mothers.

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[45] For more, see K. Kogi and J.E. Thurman, "Trends in approaches to night and shift work and new international standards", in *Ergonomics*, Vol. 36, 1993, pp. 3-13; K. Kogi, "International regulations on the organization of shift work", in *Scandinavian Journal of Work, Environment & Health*, Vol. 24, 1998, pp. 7-12.

[46] For a historical and documentary account of the UN campaign to promote women's rights, see *The United Nations and the Advancement of Women 1945-1995*, UN Blue Books Series, Vol. VI, 1995.

67. As a result, Article 8 was redrafted in the revised European Social Charter, which was opened for signature in May 1996 and entered into force in July 1999. It reads as follows: "With a view to ensuring the effective exercise of the right to the protection of maternity, the Parties undertake: [...] 4. To regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants. 5. To prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women." The basic idea behind the new provision, which has been taken from ILO Convention No. 171 and from European Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, is that regulations on the employment of women for night work are needed only in the case of maternity.[48] It is also worth noting that the Committee of Independent Experts, which is responsible for assessing the compliance of national laws with the obligations arising from the Charter, has commented extensively on the alleged incompatibility between the two principles (equality between men and women and special protection for women at work) and has "redefined" through its case law the provision of Article 8 to better reflect the jurisprudence of the European Court of Justice and the European Council Directive 92/85/EEC.

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[47] Art. 8, para. 4, has been accepted by ten of the 21 Contracting Parties. Spain denounced para. 4(b) in 1991, while the United Kingdom denounced paras. 4(a) and 4(b) in 1988 and 1990 respectively.

[48] Reference should also be made to Art. 2, para. 7, of the revised Charter which refers to measures on night work for workers of both sexes laying down the obligation for the Contracting Parties to "ensure that workers performing night work benefit from measures which take account of the special nature of the work". For more, see *Equality between women and men in the European Social Charter – Study compiled on the basis of the case law of the Committee of Independent Experts*, Council of Europe, 1999, and *Women in the working world – Study prepared on the basis of the case law of the Committee of Independent Experts*, 1995.

68. By its resolution 34/180 of 18 December 1979, the United Nations General Assembly adopted the *Convention on the Elimination of All Forms of Discrimination Against Women*. The Convention sets out in legally binding form internationally accepted principles on the rights of women and focuses on the prohibition of all forms of discrimination against women.[49] According to Article 1, the term "discrimination against women" is defined as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field". In the terms of Article 2, "States parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and undertake: [...] (f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women". Most importantly, Article 11 refers to discrimination against women in the field of employment and lays down the obligation for States parties to take all appropriate measures "in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) the right to work as an inalienable right of all human beings; (b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) the right of free choice of profession and employment". It has to be noted, however, that the Convention expressly provides for the adoption of measures offering "special protection to women during pregnancy in types of work proved to be harmful to them" (Article 11, paragraph 2(d)) and further specifies that "adoption by States parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory" (Article 4, paragraph 2).[50]

69. Following the adoption of the UN Convention, the ILO received several requests for clarification on the relationship between the UN Convention and ILO Conventions on the protection of women. The concern of most governments was a possible incompatibility between the UN Convention and ILO instruments which might result in the inability to ratify the UN Convention without previous denunciation of conflicting ILO instruments such as the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Underground Work (Women) Convention, 1935 (No. 45). The Note prepared by the Office on the subject and brought to the attention of the Governing Body in November 1984 concluded that there need not be any contradiction between the obligations arising under the UN Convention and those assumed by a State having ratified ILO Conventions providing for special protection for women for reasons unconnected with maternity, namely Convention No. 45 and Conventions Nos. 4, 41 and 89. As it was stated, "… while protective legislation unconnected with maternity has clearly been viewed with an increasing severity, the most radical position, i.e. the requirement that such legislation should be repealed immediately, did not prevail in the final text. The Convention does not expressly ask for such a step to be taken. While paragraph 1 of Article 11 clearly favours the adoption of the same standards of protection for men and women, Article 11, paragraph 3, leaves to ratifying States which already have different standards the possibility of keeping them in force for a certain time, provided that they periodically review them in the light of the considerations mentioned there".[51]

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[49] The Convention was opened for signature, ratification and accession in March 1980. It entered into force in September 1981 and, as at 16 November 2000, it had been ratified by 166 States.

[50] Under the terms of the Convention, the Committee on the Elimination of Discrimination Against Women (CEDAW) was established. The Committee, composed of 23 experts, supervises the application of the Convention on the basis of reports submitted by States parties and formulates suggestions and general recommendations on the issues covered by the Convention. In its resolution A/Res/54/4 of October 1999, the General Assembly adopted the Optional Protocol to the Convention providing for the possibility of filing individual complaints directly with the Committee subject to prior exhaustion of local remedies.

70. In February 1976 the Council of the European Communities adopted *Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions*. Under article 2 of the Council Directive, the principle of equal treatment was defined as meaning that "there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status", whereas according to the terms of article 3, paragraph 2(c), and article 5, paragraph 2(c), member States are under the obligation to take the necessary measures to ensure that "those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision". The obligation to revise, however, would be without prejudice to "provisions concerning the protection of women, particularly as regards pregnancy and maternity" which according to article 2, paragraph 3, did not fall within the Directive's scope of application.[52] Following the adoption of Directive 76/207/EEC, two EEC Member States (*Ireland* and *Luxembourg*) proceeded in 1982 to the denunciation of Convention No. 89 on the grounds that it was discriminatory rather than protective in nature.

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[51] See GB.228/24/1.

[52] The provision of art. 2(3) of the Directive has been interpreted narrowly by the Court of Justice of the European Communities to include those protective measures referring exclusively to pregnancy, confinement and a post-childbirth period. As the Court reasoned in the *Hoffman* case, "Directive 76/207 recognizes the legitimacy of protecting a woman's needs in two respects. First, it is legitimate to ensure the protection of a woman's biological condition during pregnancy and thereafter until such time as her physiological and mental functions have returned to normal after

71. In July 1991, the Court of Justice of the European Communities delivered its ruling in the *Stoeckel* case by which it affirmed that the Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions was "sufficiently precise to impose on the Member States the obligation not to lay down by legislation the principle that night work by women is prohibited, even if that obligation is subject to exceptions, where night work by men is not prohibited". In the terms of the Court's decision, "the concern to provide protection, by which the general prohibition of night work by women was originally inspired, no longer appears to be well founded and the maintenance of that prohibition, by reason of risks that are not peculiar to women or preoccupations unconnected with the purpose of Directive 76/207/EEC, cannot be justified by the provisions of article 2(3) of the Directive".[53] By ruling that the French laws on night work of women, which by and large reflected the provisions of Convention No. 89, were in violation of Community legislation, the Court raised delicate questions for EU Member States about the hierarchy of Community principles as opposed to international legal obligations arising out of the acceptance of other international agreements and directly challenged the relevance of ILO standards in matters of night work of women.[54] It is interesting to note that two years later, in August 1993, the

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childbirth. Secondly, it is legitimate to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment"; see Case 184/1983, judgement of 12 July 1984.

[53] See Case C-345/1989, judgement of 25 July 1991. On the legal implications of the Council Directive 76/207/EEC read in conjunction with the *Stoeckel* judgement, see Ch. Pettiti, "Le travail de nuit des femmes – Aspects nationaux et internationaux", in *Droit Social* (Apr. 1988), pp. 302-310; J. Savatier, "Travail de nuit des femmes et droit communautaire", in *Droit Social* (May 1990), pp. 466-470; M.-A. Moreau, "Travail de nuit des femmes, observations sur l'arrêt de la CJCE du 25 juillet 1991", in *Droit Social* (Feb. 1992), pp. 174-185; A. Supiot, "Principe d'égalité et limites du droit du travail (en marge de l'arrêt *Stoeckel*)", in *Droit Social* (Apr. 1992), pp. 382-385; C. Kilpatrick, "Production and circulation of EC night work jurisprudence", in *Industrial Law Journal* (Sep. 1996), Vol. 25, pp. 169-190; J.-Ph. Lhernould, "Un employeur peut-il s'opposer à la demande d'une de ses salariées de travailler la nuit?", in *Droit Social* (Feb. 1999), pp. 129-133; H. Masse-Dessen, "A propos du travail de nuit des femmes: nouvelle contribution sur l'application des directives européennes", in *Droit Social* (Apr. 1999), pp. 391-394.

[54] In November 2000, facing the threat of sanctions for non-compliance, France finally decided to remove the contentious provision from its Labour Code, that is article L.213-1 prohibiting the employment of women in industrial work during the night (see cases C-197/1996, judgement of 13 March 1997 and C-207/1996, judgement of 4 December 1997). In fact, in April 1999, the European Commission had asked the Court of Justice to impose a daily fine of 142,425 euros on France for non-implementation of its earlier judgement. A similar case was successfully

European Court in its judgement in the *Levy* case, while reaffirming that equal treatment of men and women constitutes a fundamental right recognized by the Community legal order, held that a "national court is under an obligation to ensure that Article 5 of Directive 76/207/EEC of 9 February 1976 is fully complied with by refraining from applying any conflicting provision of national legislation, unless the application of such a provision is necessary in order to ensure the performance by the Member State concerned of obligations arising under an agreement concluded with non-member countries prior to the entry into force of the EEC Treaty".[55]

72. In December 1991, following the *Stoeckel* judgement, the European Commission wrote to the six EEC Member States which were still parties to Convention No. 89 *(Belgium, France, Greece, Italy, Portugal, Spain)* inviting them to proceed to the denunciation of the Convention while recommending the ratification of the Night Work Convention, 1990 (No. 171). By February 1992, when Convention No. 89 was again open to denunciation, all those States had deposited their instruments of denunciation, justifying their decision as flowing from the need to bring national laws and regulations into line with Community legislation.[56]

73. In the early nineties, three more ILO member States *(Cuba, Malta* and *Switzerland)* decided to denounce Convention No. 89, claiming it was no longer compatible with the principle of non-discrimination and equal rights of men and women as enshrined in their Constitutions. In one case *(Malta)* reference was also made to the European Convention on Human Rights as prohibiting the discrimination on grounds of sex.

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brought against Italy. The Court has also dealt with infringement cases concerning the transposition of Directive 76/207/EEC against Belgium and the United Kingdom. On the application and enforcement of European equality law, see I. Heide, "Supranational action against sex discrimination: Equal pay and equal treatment in the European Union", in *International Labour Review*, Vol. 138, 1999, pp. 381-410.

[55] See Case C-158/1991, judgement of 2 August 1993. The question before the Court was whether a national jurisdiction could set aside its obligation to ensure full compliance with article 5 of the equal treatment directive if the national provisions that were incompatible with the Community legislation were intended to implement ILO Convention No. 89, that is an international agreement to which the Member concerned had become party prior to the entry into force of the EEC Treaty. The Court also pointed out that the implementation of the principle of equal treatment "even at Community level, has been gradual, requiring the Council to take action by means of directives, and that those directives allow, temporarily, certain derogations from the principle of equal treatment".

[56] See "Women's night work Convention denounced across the EC", in *European Industrial Relations Review* (Apr. 1992), pp. 16-17. The Netherlands had denounced the Convention in 1972 as inconsistent with the principle of equal treatment in employment, with Ireland and Luxembourg following suit in 1982. Another three EC Member States, i.e. Denmark, Germany and the United Kingdom, never ratified it.

74. Some brief comments are in order here. The Committee is of the opinion that the European Union's policy on the issue of night employment of women and the apparent clash with relevant international labour standards should be kept within its specific context. The European Union, as an organization of regional integration bringing together some of the world's most economically and socially advanced nations, seeks to establish high labour standards for European workers in a basically uniform political and socio-economic environment.[17] In contrast, the ILO, is a universal organization mandated to elaborate minimum standards designed to fit the extraordinarily dissimilar conditions in all its member States. It has to keep in sight the special needs of certain countries, while recognizing that human rights standards and principles are of universal application. The mandate, composition and means of action of the two organizations being radically different, it is only natural that their normative output appears at times disparate or even contradictory. As it has been pointed out in an Office paper in this regard, "… naturally, the need for standards in the same field is felt both internationally and within the Community, but this unavoidable overlapping should not mean that ILO standards should be modelled on Community standards. This practice results in standards that are highly detailed, which paradoxically does not guarantee that they can be ratified by Member States of the Union, and which moreover can prove a serious obstacle to their ratification outside the Union".[18]

75. The Committee considers that international labour legislation should not be divested of all regulatory provisions on night work of women, on condition and to the extent that such regulation still serves a meaningful purpose in protecting women workers from abuse. In particular situations where women night workers are subject to severe exploitation and discrimination, the need for protective legislation may still prevail, especially where the women themselves are anxious to retain such protective measures. The Committee will therefore have to consider whether prohibitions on night work for women in certain situations serve to protect those women from abuses of their rights, in relation in particular to security and transport issues, quite apart from and in addition to health risks for pregnant women or nursing mothers caused by their working at night. In such situations the protective function of the night work standards may, for the time being and on a limited basis, subject to regular review, be legitimately considered by some constituents to be justified.

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[17] For an overview of the main developments in gender equality at the European level in 1999, see *Equal Opportunities for Women and Men in the European Union – 1999*, Report from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, Mar. 2000.

[18] See GB.262/LILS/2/2, para. 9. This comment was made with reference to ILO Convention No. 170 on safety in the use of chemicals at work which covers a subject already dealt with in several Community directives. The question was thus raised as to the Community's exclusive competence to conclude this Convention, i.e. to decide on its ratification; see also GB.256/SC/1/3 and GB.259/LILS/4/7.

II. Scope of application

1. Substantive scope of application

76. All three Conventions under review apply only to industry. To date, with the exception of two international labour Recommendations, there is no international labour instrument dealing specifically with night work for women in non-industrial sectors. In fact, the Night Work of Women (Agriculture) Recommendation, 1921 (No. 13), recommends "that each Member take steps to regulate the employment of women wage-earners in agricultural undertakings during the night in such a way as to ensure to them a period of rest compatible with their physical necessities and consisting of not less than nine hours, which shall, when possible, be consecutive", while the Maternity Protection Recommendation, 1952 (No. 95), provides in Paragraph 5(1) that "night work and overtime work should be prohibited for pregnant and nursing women and their working hours should be planned so as to ensure adequate rest periods".

77. More specifically, the scope of application of Conventions Nos. 4, 41 and 89 covers "any public or private industrial undertaking, or any branch thereof, other than an undertaking in which only members of the same family are employed". Article 1 of the three Conventions reads in practically identical terms and defines the term "industrial undertaking" as including: "(a) mines, quarries, and other works for the extraction of minerals from the earth; (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, electrical undertaking, gas work, waterwork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure".[59] Given, however, the difficulty of setting with precision the exact limits of industrial activity, the three Conventions stipulate in Article 1, paragraph 2, that "the competent authority in each country shall define the line of division which separates industry from commerce and agriculture".[60]

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[59] In order to accord with more recent definitions of industrial undertakings, such as the one contained in the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77), Art. 1, para. 1(c), of Convention No. 89 was revised to read: "undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work".

[60] To better reflect the distinction between "industrial" and "non-industrial" occupations in the light of the Conference discussions prior to the adoption of the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77), and the Medical Examination of Young Persons

78. The three Conventions under review expressly exclude from their scope of application certain exceptional situations. The common Article 4 of Conventions Nos. 4, 41 and 89 provides that the prohibition of night work for women shall not apply "(a) in cases of *force majeure*, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character; (b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss".

79. Article 5 of Convention No. 89 further provides for the possibility of temporarily suspending the application of the prohibition of night work for women "after consultation with the employers' and workers' organisations concerned, when in case of serious emergency the national interest demands it". By "serious emergency", the intention was to refer to a war situation based on the experience of the two world wars.[61] However, there has been a clear tendency in subsequent practice to interpret this proviso far more extensively.

80. Under the growing pressure for further relaxation of the prohibition of night work for women, far-reaching exceptions were introduced by the 1990 Protocol to Convention No. 89. According to Article 1, paragraph 1(1), of the Protocol, the competent authority may authorize "variations in the duration of the night period as defined in Article 2 of the Convention and exemptions from the prohibition of night work contained in Article 3 thereof". The variations and exemptions may be introduced with respect to entire branches of activity or specific establishments subject to the following conditions:

"(a) in a specific branch of activity or occupation, provided that the organizations representative of the employers and the workers concerned have concluded an agreement or have given their agreement;

(b) in one or more specific establishments not covered by a decision taken pursuant to clause (a) above provided that:

  (i) an agreement has been concluded in the establishment or enterprise concerned between the employer and the workers' representatives concerned; and

  (ii) the organizations representative of the employers and the workers of the branch of activity or occupation concerned or the most

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(Non-Industrial Occupations) Convention, 1946 (No. 78), Art. 1, para. 2, of Convention No. 89 was slightly revised to read: "the competent authority shall define the line of division which separates industry from agriculture, commerce and other non-industrial occupations".

[61] For some background information on this, see D. Thom, "A revolution in the workplace? Women's work in munitions factories and technological change 1914-1918", in G. de Groot and M. Schrover (eds.): *Women workers and technological change in Europe in the nineteenth and twentieth centuries*, 1995, pp. 97-118.

representative organizations of employers and workers have been consulted;

(c) in a specific establishment not covered by a decision taken pursuant to clause (a) above, and where no agreement has been reached in accordance with clause (b)(i) above, provided that:

  (i) the workers' representatives in the establishment or enterprise as well as the organizations representative of the employers and the workers of the branch of activity or occupation concerned or the most representative organizations of employers and workers have been consulted;

  (ii) the competent authority has satisfied itself that adequate safeguards exist in the establishment as regards occupational safety and health, social services and equality of opportunity and treatment for women workers; and

  (iii) the decision of the competent authority shall apply for specified period of time, which may be renewed by means of the procedure under sub-clauses (i) and (ii) above".

81. The Protocol further provides in its Article 1, paragraph 2, that "the circumstances in which such variations and exemptions may be permitted and the conditions to which they shall be subject" shall be determined by national laws or regulations to be adopted after consulting the most representative organizations of employers and workers.

2. Scope of application with regard to time

82. The instruments which are the subject of this survey are intended to limit the employment of women in industrial undertakings during the night. Even though the definition of the term "night" reads practically the same in all three instruments, the range of exceptions accompanying such definition varies considerably. All three Conventions prescribe a night rest period of at least 11 consecutive hours which must include a shorter interval during which the employment of women is strictly forbidden. Under Article 2 of Convention No. 4, "the term 'night' signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning". For its part, Convention No. 41, while sharing the same definition of the term "night", authorizes in Article 2, paragraph 2, the competent authority under exceptional circumstances affecting the workers employed in a particular industry or area and upon prior consultation with the employers' and workers' organizations to "decide that in the case of women employed in that industry or area, the interval between eleven o'clock in the evening and six o'clock in the morning may be substituted for the interval between ten o'clock in the evening and five o'clock in the morning". As for Convention No. 89, it recast the definition in more flexible terms to signify "a period of at least eleven consecutive hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning". It further provides that "the competent authority may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings, but shall consult the employers' and workers' organisations concerned before prescribing an interval beginning after eleven o'clock in the evening". Finally, as already mentioned above, the 1990 Protocol allows for "variations in the duration of the night period" to be introduced by the competent authority in accordance with national laws or regulations.

83. Under common Article 6, all three Conventions permit the shortening of the night period to ten hours for no more than 60 days each year "in industrial undertakings which are influenced by the seasons and in all cases where exceptional circumstances demand it". They also stipulate in common Article 7 that the night period may be shorter than 11 consecutive hours "in countries where the climate renders work by day particularly trying to the health, provided that compensatory rest is accorded during the day".

3. Scope of application with respect to persons

84. According to common Article 3 of Conventions Nos. 4, 41 and 89, the prohibition of night work in industry applies to "women without distinction of age". An exception to this rule was first introduced by Convention No. 41, Article 8 of which states that the prohibition does not apply "to women holding responsible positions of management who are not ordinarily engaged in manual work". Under Article 8 of Convention No. 89, are also excluded from the prohibition of night work: "(a) women holding responsible positions of a managerial or technical character, and (b) women employed in health and welfare services who are not ordinarily engaged in manual work".

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85. Rarely have ILO standards given rise to such prolonged controversy as the instruments applying to women's night work in industry. The question of prohibiting or restricting the employment of women in industrial undertakings during the night epitomizes a century-long debate over sensitive questions which have divided policy-makers, trade unionists and even women's organizations themselves. Bridging the differences between the two contrasting trends, one defending the need to ensure special protection for women workers and the other seeking to implement the principle of equality between men and women, has proved an enduring challenge for the ILO's standard-setting machinery.

Additional references

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CHAPTER 3

A COMPENDIUM OF NATIONAL LAW AND PRACTICE

I. The prohibition of night employment of women in industry

86. The legal regulation of night work by women in industry differs considerably from country to country. Although most countries have some form of legislation limiting the employment of women workers during the night, the form, content and scope of the various restrictions are often dissimilar. Accordingly, the degree to which effect is given to the principles set out in the Conventions under review is hard to evaluate and does not allow for easy generalizations. In the paragraphs that follow, an effort is made to review national laws and practice by grouping together countries applying comparable labour standards with regard to women's night work while differentiating between States parties and non-parties to the four night work instruments.

87. In some countries, there is a general prohibition against the night work of women, without distinction of age, in all industrial undertakings. This is principally the case of States parties to one of the Conventions under consideration such as *Algeria,*[1] *Angola,*[2] *Austria,*[3] *Bangladesh,*[4] *Belize,*[5]

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[1] Act No. 90-11 of 21 April 1990 respecting labour relations, arts. 27, 29. The prohibition refers to the eight-hour period between 9 p.m. and 5 a.m.

[2] General Labour Act No. 2/2000 of 11 February 2000, art. 271(1b), (2c). However, the General Labour Inspectorate may authorize night work when the work is organized on a rotational basis and women workers have given their consent to being included in the shifts.

[3] Federal Act of 25 June 1969 regarding women's night work, s. 3. The Government has reported, however, that it has embarked on a process of gradually relaxing the ban on night work of women, and that the 1998 amendment to the Federal Act providing for exemptions through collective agreements was introduced as an interim solution until a new gender-neutral Act on night work is adopted and Convention No. 89 is again open to denunciation.

[4] Factories Act, 1965, art. 65(1b); Shops and Establishments Act, 1965, art. 23; Tea Plantations Labour Ordinance, 1962, art. 22. However, women may exceptionally work during the night in commercial establishments and tea plantations with the permission of the chief inspector.

[5] Labour Act of 1980, Ch. 234, s. 161(1a).

Bolivia,[6] *Burkina Faso,*[7] *Cameroon,*[8] *Central African Republic,*[9] *Chad,*[10] *Costa Rica,*[11] *Cyprus,*[12] the *Democratic Republic of the Congo,*[13] *Congo,*[14] *Djibouti,*[15] *Egypt,*[16] *Gabon,*[17] *Guinea,*[18] *Guinea-Bissau,*[19] *India,*[20] *Iraq,*[21] *Kenya,*[22] *Lebanon,*[23] *Libyan Arab Jamahiriya,*[24] *Madagascar,*[25] *Mali,*[26]

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[6] Supreme Decree of 26 May 1939 to issue the Labour Code, arts. 46, 60, and Decree of 23 August 1943 regulating the General Labour Act, art. 53.

[7] Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, arts. 80, 83. See also Decree No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 5, and Decree No. 436/ITLS/HV of 15 July 1953 concerning night work hours, art. 1.

[8] Labour Code, Law No. 92/007 of 14 August 1992, ss. 81, 82. The rest period for women must not be less that 12 consecutive hours including the night period between 10 p.m. and 6 a.m.

[9] Act No. 61-221 of 2 June 1961 establishing the Labour Code, arts. 120, 121. See also Decree No. 839 ITT of 22 November 1953 concerning night work hours, art. 1, and Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, arts. 3, 4.

[10] Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, arts. 205, 208.

[11] Labour Code of 1943, as amended up to 1996, art. 88(b).

[12] Employment of Women (During the Night) Law of 26 February 1932, s. 3. However, the Government has announced its intention to abolish the existing protective legislation for women which is regarded as discriminatory and to denounce Convention No. 89.

[13] Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, ss. 106, 107, and Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, ss. 13, 16.

[14] Act No. 45-75 of 15 March 1975 establishing the Labour Code, arts. 106, 108, 109.

[15] Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952, art. 114.

[16] Labour Code promulgated by Act No. 137 of 1981, art. 152. The prohibition does not apply, however, to "female workers purely engaged in agriculture"; ibid., art. 159.

[17] Act No. 3/94 of 21 November 1994 establishing the Labour Code, arts. 166, 167, 169.

[18] Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, ss. 148, 149, and Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women, art. 1.

[19] General Labour Act No. 2/86 of 5 April 1986, art. 160.

[20] Factories Act No. 63 of 23 September 1948, as amended, s. 66(1b).

[21] Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(1), (2).

[22] Employment Act No. 2 of 15 April 1976, s. 28(1). The Government has indicated that it intends to amend this section considering that it discriminates against women workers.

[23] Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, art. 26.

[24] Labour Code, Act No. 58-2970 of 1 May 1970, art. 96.

[25] Act No. 94-029 of 25 August 1995 establishing the Labour Code, art. 92.

[26] Act No. 92-020 of 23 September 1992 establishing the Labour Code, arts. L.141, L.186. Women must have a minimum nightly rest of 12 hours including the period between 9 p.m. and 5 a.m.

Mauritania,[27] *Morocco,*[28] *Niger,*[29] *Pakistan,*[30] *Philippines,*[31] *Rwanda,*[32] *Saudi Arabia,*[33] *Senegal,*[34] *Slovakia,*[35] *Slovenia,*[36] *Togo,*[37] *Tunisia*[38] and *Venezuela.*[39] Yet, countries not having ratified, or no longer bound by any of the night work instruments such as *Croatia,*[40] *Dominica,*[41] *Jordan,*[42] *Malaysia,*[43]

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[27] Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, s. 9, and Order No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 3.

[28] Decree of 2 July 1947 to regulate employment, art. 12.

[29] Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code, art. 98, and Decree No. 67-126/MFP/T of 7 September 1967 on labour regulations, art. 107.

[30] Factories Act, 1923, as amended to 1987, s. 23-C(2); Factories Act, 1934, as amended to 1987, s. 45(1b).

[31] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 130.

[32] Labour Code, Act of 28 February 1967, art. 121. However, the Government has taken the position that existing legislation is outdated, since current practice favours the abolition of the prohibition and the enactment of night work regulations applicable to all workers. It intends, therefore, to draft new rules following the provisions of Convention No. 171 as soon as the new labour laws are adopted by the Transitional National Assembly.

[33] Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 161.

[34] Order No. 5254 IGTLS/AOF of 19 July 1954 regarding conditions of work of women and pregnant women, art. 3.

[35] Act No. 451/1992 providing for the Labour Code, ss. 90(2), 151. The law provides for an uninterrupted rest for women of no less than 11 hours including the period between 10 p.m. and 6 a.m.

[36] Act on the fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45, and the Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, art. 79.

[37] Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 110, and Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children, arts. 7, 8.

[38] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 66.

[39] Decree No. 1.563 of 31 December 1973 on labour act regulations, art. 208.

[40] Labour Act of 17 May 1995 (Text No. 758), art. 52.

[41] Employment of Women, Young Persons and Children Act, 1991, art. 10(1).

[42] Labour Code, Law No. 8 of 1996, art. 69, and Ministerial Order No. 4201 of 30 April 1997 concerning the jobs and hours in which the employment of women is prohibited, art. 4.

[43] Employment Act No. 265 of 1955, as amended to 1981, ss. 34(1), 36, 2B. The Director-General of Labour may, however, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction subject to any conditions he may impose. Before exemption is given, the Director-General of Labour usually consults the employees or trade unions concerned to take account of their opinions. In addition, the Minister of Labour has general power to grant exemptions, subject to such conditions as he may deem fit to impose, to any person or class of persons from all or any of the prohibitions prescribed in employment laws. However, this discretionary power of the Minister of Labour has rarely been exercised.

Oman,[44] *Papua New Guinea*,[45] *United Kingdom (Falkland Islands*,[46] *Gibraltar*,[47] *Guernsey*[48]*)*, or *Yemen*[49] have also enacted legislation banning the employment of women in industry during the night. Similarly, in *Bahrain*,[50] *Kuwait*,[51] *Syrian Arab Republic*,[52] and the *United Arab Emirates*,[53] women may not be employed at night except otherwise regulated in specific orders of the Minister of Labour and Social Affairs, while in *Indonesia*,[54] women are not allowed to perform work at night unless specific authorization is granted to enterprises of specific nature fulfilling certain requirements.

88. A few countries are in the process of amending existing legislation with a view to eliminating the general prohibition on night work of women. This is the case in *Ghana*,[55] and the *Russian Federation*.[56]

89. In some countries, while national laws contain provisions proscribing the employment of women during the night, such provisions are not legally enforced and remain inactive. In *Ukraine*,[57] for instance, the general ban on women's night employment is not observed in practice, so that women may freely work during the night in all branches of economic activity. The Government of *Romania*[58] has stated that, while a general prohibition against the employment of women in industrial enterprises during the night is formally still in force, in conformity with Convention No. 89 which was ratified in 1957, it no longer corresponds to social and economic realities and at present applies only to pregnant and breastfeeding mothers. In *France*, article L.213-1 of the Labour Code prohibiting the night employment of women in industrial work has been in disuse since the 1991 decision of the European Court of Justice in the *Stoeckel* case, though not yet formally repealed. In November 2000, the French Parliament adopted a Bill abolishing the ban on the night work of women and introducing night work regulations for both male and female workers.

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[44] Labour Law enacted by the Sultani Decree No. 34/73, s. 80.

[45] Employment Act No. 54 of 21 August 1978, s. 99(1).

[46] Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

[47] Employment Ordinance.

[48] Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

[49] Labour Code, Act No. 5 of 1995, as amended by Act No. 25 of 1997, art. 46(2).

[50] Legislative Decree No. 23 of 16 June 1976 promulgating the labour law for the private sector, as amended by Legislative Decree No. 14 of 1993, art. 59.

[51] Act No. 38 of 1964 regarding employment in the private sector, art. 23.

[52] Law No. 91 of 5 April 1959 establishing the Labour Code, art. 131.

[53] Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 27.

[54] Law on Manpower Affairs, No. 25 of 3 October 1997, art. 98(1c), (2c), and Ministerial Regulation No. 04/MEN/1989 on procedures to employ women workers at night, arts. 1-3. See also Act No. 1 of 6 January 1951, art. 7.

[55] Labour Decree, 1967, s. 41(1). In the terms of art. 78(1a), however, of the new draft Labour Code, it would only be prohibited to employ a pregnant woman without her consent to do night work between 10 p.m. and 7 a.m.

[56] Labour Code of 9 December 1971, as amended up to 30 April 1999, art. 161. In the terms of a new draft Labour Code now tabled before the State Dumas, only pregnant women shall be prohibited from working at night, while women with children aged under 14 years could be employed on night work only with their consent.

[57] Labour Code of 11 April 1994, art. 175. The Government has reported that as at 1 January 1999, as many as 314,457 female workers were employed on night shifts. However, within the framework of an action programme designed to improve security conditions, occupational hygiene and the working environment in all sectors and in all regions, Regulations No. 381 of 27 March 1996 were adopted on the programme of disengagement of women from productions linked with arduous work and dangerous conditions as well as limitation of their work at night for 1996-98. As a result, some 15,800 women who were used to working in industrial occupations such as foundry, plate and sheet rolling, pipe rolling, furniture manufacturing, metal coating or dyeing have been released from night work.

90. In some other countries, even though a comprehensive prohibition may exist, it is often diluted by means of broad exceptions or industry-wide derogations. In *Turkey*,[59] for instance, girls and women irrespective of their age are, in principle, not allowed to engage in industrial work during the night. However, women who have completed 18 years of age may, subject to certain conditions, be employed on night shifts in industrial works whose nature requires the employment of women workers, that is works requiring dexterity, speed and attention which are performed at a steady pace and do not require an excessive amount of energy or strength. In the case of *Lithuania*, the Government has reported that women's night work is allowed in those branches of economic activity where such work is indispensable, such as trade, social services, textile and light industry, food industry and other spheres of production involving shift work. Similarly, in *Latvia*,[60] and the *Republic of Moldova*,[61] women's night work is generally prohibited except in such kinds of work where it is highly necessary. In *Mauritius*,[62] where night work in industrial undertakings remains, in principle, prohibited for female workers, specific legislation has been enacted to the effect that women employed in export

[58] Labour Code, Law No. 10 of 23 November 1972, arts. 153, 154. A new draft Labour Code is currently the subject of consultations with the social partners. Contrary to existing legislation, the new Code does not address separately the employment of women, but gives pride of place to fundamental principles such as non-discrimination and equality of opportunity and treatment, and proposes to limit the restrictions on night work only to young persons and pregnant or breastfeeding mothers.

[59] Labour Act No. 1475 of 25 August 1971, art. 69, and Decree No. 7/6909 of 27 July 1973 to approve regulations respecting the conditions of work for women working night shifts on industrial works, art. 2.

[60] Labour Code, as amended to 25 October 1994, art. 169.

[61] Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 169. The Government has reported that because of the ongoing economic crisis most industrial enterprises only operate during the day and that night work is limited to sectors such as the wine and tobacco industries.

[62] Labour Act, 1975, s. 15(3a).

processing zones or other industrial enterprises may be required to work between 10 p.m. and 5 a.m. provided that they will not resume work before a lapse of 12 hours.[63]

91. In some countries, the employment of women in industrial undertakings during the night is, in principle, permitted subject to certain conditions. In *Sri Lanka*,[64] for instance, all women may, in principle, be assigned to night work positions subject to the following restrictions: (i) no woman may be compelled to work at night against her will; (ii) written sanction of the Commissioner of Labour must be obtained by every employer prior to the employment of women to work after 10 p.m.; (iii) no woman who has been employed between 6 a.m. and 6 p.m. may be required to work after 10 p.m. on any day; (iv) no woman may be employed for more than ten days on night work, during any one month. In the *Republic of Korea*,[65] female employees may not be forced to work during a time period from 10 p.m. to 6 a.m. except with their consent and on condition that the approval of the Ministry of Labour has been obtained. In *Israel*,[66] women's night work is in principle permitted subject to certain conditions set by the Minister of Labour and Social Welfare in the interest of their health and security as follows: (i) employees receive a 12-hour break between workdays, (ii) transportation to work is provided if otherwise unavailable; (iii) hot drinks are provided during breaks; (iv) workers have appropriate places to rest during breaks.

92. The Committee has noted that, among the countries which refrain from applying women-specific regulations on night work for reasons of gender equality and non-discrimination, there are a few countries which are still under the obligation to continue to enforce a prohibition against the night work of women since they have formally accepted one or more of the ILO instruments concerning the night work of women in industry. The Government of *Brazil*, for instance, which ratified Convention No. 89 in 1957 and is still bound by its provisions, reported that the night work of women is no longer prohibited following the promulgation of the Federal Constitution of 1988, article 5(I) of which lays down the principle of equality between men and women, while article 7(XXX) prohibits discrimination as to wages, type of work or recruitment criteria on grounds of sex, age, colour or civil status.[67] Likewise, the

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[63] Export Processing Zones Act, 1970, s. 14(7), and Industrial Expansion Act No. 11 of 28 April 1993, s. 20(6).

[64] Employment of Women, Young Persons and Children (Amendment) Act, No. 32 of 1984, ss. 2A, 2B, 2C.

[65] Labour Standards Act No. 5309 of 13 March 1997, art. 68.

[66] Employment of Women Law, No. 5714-1954, s. 2(a). Israeli law further provides that an employer may not refuse to hire a woman only because she announced that she does not accept night work out of family considerations.

[67] According to the Government, Convention No. 89 has ceased to be effective, the Constitution having amended *ipso facto* arts. 379 and 380 of the Consolidation of Labour Acts that

Government of *South Africa*, which ratified Convention No. 89 in 1950 and has not so far denounced it, has indicated that its national legislation does not contain at present any prohibition on the employment of women at night since such a prohibition could be construed as discriminatory and would contradict existing labour laws which outlaw all forms of discrimination.[68] The Government of the *Czech Republic*, which has accepted both Convention No. 89 and its Protocol, has indicated that by virtue of a 1994 revision of the Labour Code the former prohibition of night work for women has been abolished and new gender-neutral regulations on night work have been introduced.[69] The Government of *Paraguay*, which ratified Convention No. 89 in 1966, reported that under the laws currently in force there is no general prohibition of night work for women except for expectant mothers.[70] In *Guatemala*, which accepted Convention No. 89 in 1952 and is still bound by its provisions, the prohibition of night work for women has been deleted by virtue of a 1992 enactment amending the Labour Code which now prohibits only night work performed by minors.[71] In *Panama*, it appears that national legislation has never given effect to the provisions of Convention No. 89 since the ratification of the said instrument in 1970.[72] In the *Dominican Republic*, which has been bound by Convention No. 89 since 1953, the general prohibition on women's night work has been lifted under the new Labour Code adopted in May 1992.[73] In *Comoros*,

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previously regulated the prohibition of night work for women. In response to a series of commentaries formulated by the Committee of Experts in the last ten years, the Government has reaffirmed that according to the new Federal Constitution any protection specifically accorded to women workers, except for reasons of maternity and breastfeeding, would amount to discrimination, while in a letter received on 13 September 1990 the Government had communicated its intention to denounce Convention No. 89.

[68] In its 1993 report under art. 22 of the ILO Constitution, the Government has reiterated that the practical application of the Convention has ceased, while in replying to a 1994 observation by the Committee of Experts it indicated that all restrictions to employment of women at night had been removed from the Mine Health and Safety Act, 1996, the Basic Conditions of Employment Act, 1997, and the Labour Relations Act, 1995, and announced its intention to denounce Convention No. 89 in 2001.

[69] The Government has announced its intention to denounce Convention No. 89 and the Protocol of 1990 following the legislative amendments inspired by the provisions of Convention No. 171.

[70] Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, promulgating the Labour Code, arts. 128, 130.

[71] Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended by Decree No. 64-92 of 2 December 1992 regarding the reform of the Labour Code, art. 148.

[72] In reply to repeated comments made by the Committee in previous years, the Government has indicated that it is examining the possibility of denouncing the Convention for economic and social reasons.

[73] Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 231. The Government has reported that the National Congress has approved the denunciation of the Convention at the

Convention No. 89, ratified in 1978, has ceased to apply since the adoption of the Labour Code of 1984 which repealed earlier legislation and no longer prohibits night work for women.[74] Similarly, the Government of *Zambia* enacted new legislation in 1991 abolishing the ban on women's night work and yet it is still party to Convention No. 89.[75] The Government of *Malawi*, which continues to be bound by Convention No. 89, has reported that, under the new Employment Act, No. 6 of 2000, which came into effect on 1 September 2000, the prohibition on women's night work was removed so that women are free to choose whether to work at night or not. In the case of *Burundi*, which is a party to Conventions Nos. 4 and 89 since 1963, the new Labour Code of 1993 attaches primary importance to the principle of equality of opportunity and treatment and therefore omits any explicit prohibition against the employment of women during the night. The Government of *Benin* has reported that, under the new Labour Code adopted in 1998, women are no longer prohibited from working at night, which implies that Conventions Nos. 4 and 41 ratified in 1960 have ceased to apply. Similar is the situation in *Côte d'Ivoire* where effect is no longer given to Conventions Nos. 4 and 41 following the adoption of a new Labour Code in 1995.[76] The Government of *Suriname*, which ratified Convention No. 41 in 1976, has indicated that the Convention was no longer implemented since the prohibition on night work for women was lifted in 1983.[77] The Government of *Argentina*, for which Convention No. 41 is still in

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expiration of the current period of ten years when the Convention will again be open to denunciation.

[74] Labour Code, Law No. 84-018/PR of 18 February 1984, art. 119. The Labour Code provides that women and children must have at least 12 hours of rest between workdays, and that the specific conditions of night work for women and children will be laid down in laws to be adopted separately. The Government has reported that industry is practically non-existent and that most women working during the night are employed in hotels or hospitals.

[75] Employment of Women, Young Persons and Children (Amendment) Act No. 4 of 6 September 1991, s. 6. In its last report under art. 22 of the ILO Constitution, the Government has stated that the protective role of the Convention has become an instrument of discrimination against women. It also informed that, after consultations with the most representative organizations of employers and workers, it was mutually agreed to denounce the Convention and that the formal instrument of denunciation is expected to be deposited in the year 2001.

[76] Act No. 95-15 of 12 January 1995 establishing the Labour Code, arts. 22.2, 23.1, and Act No. 96-204 of 7 March 1996 regarding night work, art. 4. The Government has stated that the prohibition of night work for women which was heretofore deemed to be a measure of protection is now seen as discriminatory in nature and an unwarranted barrier to women's access to employment.

[77] Decree E-41 of 12 September 1983 repealed the prohibition of night work for women provided for under s. 20 of the Labour Act of 1963. For the last 15 years, the Committee of Experts has been drawing the Government's attention to this situation of legal uncertainty and the need for remedial action. In its latest report under art. 22 of the ILO Constitution on the application of Convention No. 41, the Government stated that the possibility of denunciation of the Convention was still under consideration.

force, reported that new legislation was enacted in 1991 abolishing the general prohibition of night work for women.[78] The Government of *Estonia*, which is still bound by Convention No. 41 ratified in 1935, recognized the incongruity between national legislation and the provisions of the Convention but considered that the ban on night work of women was not applicable and realistic nowadays. In the case of *Lithuania*, national law and practice have substantially departed from the outright prohibition prescribed under Convention No. 4, to which Lithuania has been a party since 1931, without the said instrument having as yet been denounced. The Government of *Cuba* has ceased to give effect to Convention No. 4 while still formally bound by its provisions.[79] In like manner, in *Nicaragua*, which has been a party to Convention No. 4 since 1934, labour legislation contains no provision banning night work of women.[80]

93. With respect to the situation described in the preceding paragraph, the Committee wishes to express its serious concern over what appears to be an ongoing pattern of non-compliance with established procedures relating to the acceptance of international labour Conventions. In the interest of preserving a coherent body of international labour standards and giving full meaning to the Organization's supervisory mechanisms, the Committee would strongly appeal to certain member States to harmonize their legislation in that respect. The significance and implications of the growing tendency among States parties to Conventions Nos. 4, 41 and 89 to no longer give them effect cannot be underestimated; yet, the Committee considers it of critical importance to recall that it is not sufficient to invoke the principle of non-discrimination in employment and occupation or the principle of equality of treatment to nullify the obligations incumbent upon a member State by virtue of its formal acceptance of an international Convention.

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[78] In January 1992, following the adoption of the Employment Law No. 24.013 of 13 November 1991, art. 26 of which deletes art. 173 of the Labour Contract Law No. 20.744 of 13 May 1976, the Government of Argentina communicated its instrument of denunciation of Conventions Nos. 4 and 41. The denunciation of Convention No. 41 could not be registered, however, as the Convention was not open to denunciation at that time.

[79] In its latest report submitted under art. 22 of the ILO Constitution, the Government of Cuba has expressed the view that it will eventually have to withdraw from Convention No. 4 on the same grounds as those invoked in December 1991 for the denunciation of Convention No. 89.

[80] Labour Code, Act No. 185 of 30 October 1996, art. 138. The Committee of Experts has been requesting the Government for many years to take the necessary measures to ensure that national laws are consistent with the international commitments made. In its latest report under art. 22 of the ILO Constitution on the application of Convention No. 4, the Government stated that the Ministry of Labour, through its Division of International Labour Affairs and Technical Cooperation and with the participation of public institutions and the most representative employers' and workers' organizations, has undertaken a nationwide consultation to examine the possibility to ratify either Convention No. 171, or Convention No. 89 and its Protocol, while denouncing Convention No. 4, and that the conclusions of such consultation are now being reviewed.

II. General prohibition on night work

94. A few countries have enacted legislation providing for a general ban on night work for all workers. In *Belgium*,[81] and *Switzerland*,[82] for instance, workers are generally prohibited from working during the night. Derogations to the prohibition are only possible subject to authorization, while workers may not be required to perform night work without their consent. Likewise, the labour laws of *Barbados*[83] prohibit night work for both men and women workers in any industrial undertaking unless the employer obtains a certificate from the chief labour officer for that purpose. In *Sweden*,[84] night work is basically prohibited as national laws provide that all employees must be afforded free time for nightly rest including the hours between midnight and 5 a.m. Deviations are possible where certain types of work, as a consequence of the nature of the work, the needs of the general public, or other special circumstances, must be continued during the night. In *Norway*,[85] night work is generally prohibited except in specific branches such as transport, medical institutions, hostelry and catering, and telecommunications. Night work is also permissible by agreement with elected union representatives or by permission of the labour inspection, especially in cases of heavy workload, unforeseeable events or imperative need.

95. In several countries, no distinction is made between male and female workers in terms of access to night employment, so that the same restrictions, if any, apply to workers of both sexes. These are most often restrictions designed to protect workers for medical reasons or on account of special family responsibilities. In *Lithuania*,[86] for instance, night work is not permitted for persons who are not allowed to work at night according to medical conclusions, while it is prohibited to assign night work, without the employee's prior consent, to male or female employees who are single parents or custodians of children who are under the age of 8, or to disabled persons, provided that such kind of work is not forbidden for them by the commission establishing the level of disability. In *South Africa*, according to the Basic Conditions of Employment Act which regulates night work, from 6 p.m. to 6 a.m. the next day, an employer may only require or permit an employee to work if the employee agrees and if the employee is compensated by an allowance or a reduction in hours and transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift. Furthermore, an employer who requires employees to perform work on a regular basis after 11 p.m. and before 6 a.m. must inform the employee of the health and safety hazards involved and of the employee's right to undergo a medical examination. In the *Netherlands*[87] and *Spain*,[88] when an occupational medical examination indicates that a worker's health problems are linked to night work, the employer must transfer the worker concerned to day work within a reasonable period. In *Slovenia*, single parents of a child under 7 years of age, a severely ill child, or a mentally or physically handicapped child, shall only be obliged to perform night work upon their prior written consent. In *Italy*,[89] night work may not be compulsorily performed: (i) by a female worker who is the mother of a child under the age of 3, or by the father who is living with the mother; (ii) by a female or male worker who is the sole parent having custody of a son or daughter under the age of 12 who is living with her/him; (iii) by a female or male worker who is responsible for the care of a disabled person within the meaning of relevant laws. In *Estonia*,[90] employees who are not allowed to work during night time on medical grounds, as well as persons taking care of disabled persons, persons raising motherless disabled children or children under 14 years of age, guardians of children under 14 years of age, and guardians or custodians of disabled children, may only be employed on night shifts with their consent. In *Belarus*,[91] the *Russian Federation*[92] and *Ukraine*,[93] disabled persons may be recruited for night work only with their consent and on condition that such work has not been prohibited according to medical recommendations. Furthermore, working fathers who are raising children alone (because the mother has died or lost parental rights, is hospitalized, or for other reasons), as well as legal guardians of minors, are entitled to the same guarantees enjoyed by working mothers in connection with maternity, including the prohibition of night work. In *Bulgaria*,[94] night work is generally prohibited to employees undergoing rehabilitation, except on their own consent and only when such employment is not detrimental to their health, and to employees who are continuing their education while under employment. In *Japan*,[95] under a legislative revision which entered into force on 1 April 1999, workers who take care of children under elementary school age, or of other family members in need of care due to injury, sickness or physical or mental disability, may not be employed between 10 p.m. and 5 a.m. if they so request.

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[81] Labour Act of 16 March 1971, as amended by Act of 17 February 1997 on night work, ss. 35(1), 36, 37, and Collective Agreement No. 46 of 23 March 1990 concerning night work, art. 3(1). Provided that the nature of the work or activity demands it, night work is permitted inter alia in hotels, restaurants, press, travel agencies, gas stations, power plants, shipyards, pharmacies, medical establishments, bakeries and agricultural undertakings.

[82] Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, arts. 16, 17, 17e, and Order No. 1 of 10 May 2000 relative to Federal Labour Act, arts. 27, 28. Regular night work is authorized only when this is indispensable for technical or economic reasons, while temporary night work is authorized in the case of established urgent need. When necessary, an employer assigning workers to regular night work has to take appropriate measures for their protection such as transport arrangements and resting, food or childcare facilities.

[83] Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 4. Before issuing the certificate authorizing night work, the chief labour officer must satisfy himself that: (i) adequate transportation is available for transporting employees to their place of work, and to their homes within a reasonable time after work; (ii) the employer has provided proper rest-room facilities for eating meals at the place of employment; and (iii) adequate intervals for rest and meal time are afforded to those employees.

[84] Hours of Work Act (1982:673) of 24 June 1982, s. 13.

[85] Act No. 4 of 4 February 1977 respecting workers' protection and the working environment, as subsequently amended, last by Act No. 19 of 28 February 1997, ss. 42, 43.

[86] Law on Labour Protection No. I-266 of 7 October 1993, art. 45.

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[87] Working Time Act of 23 November 1995, art. 4:9.

[88] Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 36(4).

[89] Act No. 25 of 5 February 1999 on provisions for the fulfilment of obligations deriving from Italy's membership of the European Union – Community Law 1998, art. 5(2).

[90] Working and Rest Time Act of 15 December 1993, ss. 19(2-4), 8.

[91] Labour Code of 26 July 1999 (Text No. 432), ss. 117(5), 271(4), 287.

[92] Labour Code of 9 December 1971, as amended up to 30 April 1999, arts. 48, 172-1.

[93] Labour Code of 11 April 1994, arts. 55, 186-1.

96. In other countries, night work restrictions pertain to the nature of specific activities rather than to the personal needs of the worker. In *Haiti*,[96] night work may only be authorized for those services which cannot be provided during daytime, and may not be imposed on workers for work which can normally be performed during the day. In *Finland*,[97] night work is allowed mainly in periodic work; in work which has been divided into three or more shifts; in the maintenance and cleaning of public roads, streets, and airfields; in pharmacies; at newspapers and magazines, news and photographic agencies and in other media work, and in the delivery of newspapers; in specific agricultural and farm works; with the employee's consent in bakeries.

97. In some countries, there is no prohibition on the employment of women at night as legislation does not distinguish between night and day work or does not apply different labour standards to male and female workers. This is the case in *Australia*,[98] *Botswana*,[99] *Burundi*, *Canada*, *Chile*, *Cuba*,[100]

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[94] Labour Code of 24 March 1986, as amended to 1996, art. 140(4).

[95] Law No. 76 of 15 May 1991 concerning the welfare of workers who take care of children or other family members including childcare and family care leave, art. 16-2.

[96] Labour Code, Decree of 24 February 1984, art. 120.

[97] Hours of Work Act No. 605 of 1996, ss. 26, 27. An employee may not be required by the work schedule to work more than seven consecutive night shifts.

[98] The Government has reported that a very small number (estimated at less than 1 per cent) of awards and agreements at the level of states and territories contain provisions prohibiting female employees from working during a period of night. In Queensland, for instance, under the Bacon Manufacturing and Meat Preserving Award, female employees are not allowed to work on night shifts, while under the Retail Industry Interim Award females under 18 years of age may not be required to work after 9 p.m. unless an adult is present and transport is provided where normal or public transport is not available.

[99] The Employment (Amendment) Act, No. 26 of 1992, removed s. 116 of the Employment Act, No. 29 of 1982, Ch. 47:01 which restricted night work by women.

[100] Protection and Hygiene at Work Law, No. 13 of 28 December 1977, art. 37. Women may not be employed in those jobs that could prove particularly harmful in view of women's specific physical and physiological characteristics, taking also into account women's important social

Dominican Republic,[101] *Ecuador*,[102] *El Salvador*,[103] *Ethiopia*,[104] *Mexico*,[105] *New Zealand*, *Peru*,[106] *Qatar*,[107] *Seychelles*, *Singapore*, *Uruguay*,[108] *Viet Nam*[109] and *Zimbabwe*.

III. Special protection for women before and after childbirth

98. In most of the countries where all prohibitions or restrictions on women's employment during the night have been removed, as part of an effort to promote equal opportunities and ensure respect for the principle of non-discrimination between men and women at work and in employment, specific regulatory regimes on night work continue to apply for only two categories of workers with special needs, namely expectant or breastfeeding mothers and young persons. The rationale behind such legislation is the concern and awareness that women workers, because of their unique reproductive function, are more exposed to the hazards of night work during pregnancy and immediately after confinement which would call for well-circumscribed exceptions from the principle of non-discrimination and equality of treatment between men and women. Some of those regulations lay down an absolute prohibition on night work whereas others provide for qualified restrictions and diverse exceptions. Generally speaking, the special protection for pregnant women and nursing mothers is not limited to those employed in industrial undertakings but applies to all sectors of economic activity.

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mission as mothers. In addition, the Labour Code specifically provides that pregnant women and women at the reproductive age may not be employed in activities which could affect their gynaecological system, reproductive function or the normal evolution of pregnancy; see Labour Code of 28 December 1984, art. 213.

[101] Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 231.

[102] Labour Code of 29 September 1997, arts. 49, 79.

[103] Labour Code of 15 June 1972, as amended up to 1994, art. 161.

[104] Labour Proclamation No. 42/1993, art. 87(1). It is prohibited, however, to employ women on types of work that may be listed by the Minister as particularly arduous or harmful to their health.

[105] Political Constitution of the United Mexican States, art. 4, and Federal Labour Act, as amended up to 1 October 1995, art. 164.

[106] Constitution of 1993, arts. 2(2), 26.

[107] Women's employment is not addressed in labour laws in general, and thus there are no provisions specifically prohibiting night work for female workers. Yet, the Government has reported that in practice women are not employed after 9 p.m. except in institutions such as hospitals, medical centres, hotels and restaurants.

[108] Decree No. 37/997 of 14 February 1997, art. 1.

[109] Labour Code of 23 June 1994, art. 111(1).

99. In some countries, labour legislation lays down a stringent prohibition on night work for all expectant mothers throughout their pregnancy and for nursing mothers during a specified period after childbirth which may vary from one to three years. In *Hungary*[110] and *Italy*[111] for instance, women may not be employed at night between midnight and 6 a.m. from the certification of pregnancy until the child reaches 1 year of age, while in *Slovakia*,[112] a pregnant woman or a woman taking care of a child younger than 1 year of age may not engage in night work under any circumstances, even if it is night-time work which, as an exception, women are permitted to perform. In *Luxembourg*,[113] pregnant women and breastfeeding mothers may not work between 10 p.m. and 6 a.m. throughout pregnancy and during the 12-week period following delivery. In *Albania*,[114] *Eritrea*,[115] *Estonia*,[116] *Ethiopia*,[117] and *Thailand*,[118] it is forbidden to have a pregnant woman working during the night. In *Indonesia*,[119] where women may under certain conditions be authorized to work at night, labour laws lay down an unconditional prohibition of night work for pregnant and breastfeeding female workers. In *Panama*,[120] the employer is under the obligation to take all necessary measures to ensure that pregnant workers are not engaged in night work, that is work performed between 6 p.m. and 6 a.m. In

[110] Act No. 22 of 3 March 1992 on the Labour Code, art. 121(1). This is an absolute prohibition which may not be lifted even at the employee's express request.

[111] Act No. 25 of 5 February 1999 on provisions for the fulfilment of obligations deriving from Italy's membership of the European Union – Community Law 1998, art. 5(1). The prohibition relates to the period from midnight to 6 a.m. As regards women workers who are normally assigned to dangerous, tiring or unhealthy work, they have to be transferred to other duties from the first day of pregnancy up to the seventh month after childbirth. Should this not be possible, the competent inspection service may authorize their absence from work during which period they will be entitled to the corresponding maternity benefit, or 80 per cent of pay.

[112] Act No. 451/1992 providing for the Labour Code, s. 156(3).

[113] Act of 3 July 1975 on maternity protection, as amended by Act of 7 July 1998, art. 4.

[114] Labour Code, Act No. 7961 of 12 July 1995, arts. 104, 108. It is also prohibited to employ women during day or night 35 days before the presumed date of confinement, and 42 days after confinement.

[115] Labour Law No. 8/1991, art. 32(3).

[116] Working and Rest Time Act of 15 December 1993, s. 19(2), (3). A woman raising a disabled child or a child under 14 years of age may be assigned to night work only with her consent.

[117] Labour Proclamation No. 42/1993, art. 87(3).

[118] Labour Protection Act (B.E.2541) of 12 February 1998, art. 39. In addition, when women are employed during the night in works which are hazardous to their health and safety, the employer may be ordered by the Director-General of the Labour Department, upon the recommendation of the labour inspectorate, to change or reduce their working hours.

[119] Law on Manpower Affairs, No. 25 of 3 October 1997, art. 99, and Ministerial Regulation No. 04/MEN/1989 on procedures to employ women workers at night, art. 3(a).

[120] Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995, art. 116.

Cuba,[121] women are exempted from night shifts during pregnancy and may be transferred to another occupation with a previous medical report. Similarly, in *Chile*,[122] pregnant women normally employed in work considered detrimental to their health have to be assigned, without any wage reduction, to other duties that involve no risk to their health and, in this respect, work carried out during night time is considered as detrimental to health. In *Mexico*[123] and *Paraguay*,[124] pregnant and breastfeeding workers may not be engaged in industrial work during the night, dangerous or unhealthy work, or work in commercial establishments after 10 p.m., when their health or that of their child might be affected, without any detriment to their wages, benefits or rights. In *Azerbaijan*,[125] *Belarus*,[126] *Bulgaria*,[127] *Latvia*,[128] *Lithuania*,[129] *Republic of Moldova*,[130] *Russian Federation*[131] and *Ukraine*,[132] it is forbidden to assign to night work pregnant women and women who have children under 3 years of age. In most of these countries, women workers with children aged between 3 and 14 years, or mothers taking care of disabled children under 14 years of age may be employed to do night work only with their consent. Similarly, in *Poland*[133] pregnant women are not allowed to work at night, while women taking care of children up to 4 years of age may not engage in night work unless they give their consent. In *Austria*[134] and *Germany*,[135] maternity protection laws lay down a complete ban on night work of pregnant women and nursing mothers between 8 p.m. and 6 a.m.

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[121] Protection and Hygiene at Work Law, No. 13 of 28 December 1977, art. 40. See also Labour Code of 28 December 1984, art. 213.

[122] Labour Code of 7 January 1994, art. 202(c).

[123] Federal Labour Act, as amended up to 1 October 1995, art. 166.

[124] Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, promulgating the Labour Code, art. 130.

[125] Labour Code of 1 February 1999, arts. 79(1), 98(1), 240(1), 242(2), 243(4).

[126] Labour Code of 26 July 1999 (Text No. 432), ss. 117(4), 170, 263(1), (2).

[127] Labour Code of 24 March 1986, as amended to 1996, art. 140(4).

[128] Labour Code, as amended to 25 October 1994, arts. 51(2), 170, 171-1, 176.

[129] Law on Labour Protection, No. I-266 of 7 October 1993, art. 63.

[130] Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 170.

[131] Labour Code of 9 December 1971, as amended up to 30 April 1999, arts. 48, 162. Under art. 252 of the new draft Labour Code now tabled before the State Dumas, night work is prohibited only for pregnant women, whereas women with children aged under 14 years may be employed in night work only with their consent.

[132] Labour Code of 11 April 1994, arts. 176, 177, 184.

[133] Labour Code, Act of 26 June 1974, as amended up to 1996, arts. 178, 189-1. The prohibition of night work when raising a child up to 4 years of age applies also to male employees, provided that when both parents or guardians are employed such right may be exercised only by one of them.

100. In some countries, the prohibition is not absolute in the sense that, if an expectant or nursing mother requests an assignment to day work, the employer is obliged to comply with her request. This is the case, for instance, in *Belgium*,[136] the *Czech Republic*[137] and *Japan*.[138] In *Israel*,[139] as from her fifth month of pregnancy a woman employee may notify her employer in writing that she does not agree to work at night, following which the employer is obliged to assign her to other duties.

101. In a few countries, the prohibition covers only part of the pregnancy period, usually the final two months before delivery. In *China*[140] and *Viet Nam*,[141] female workers as from their seventh month of pregnancy, and breastfeeding mothers during a 12-month period after childbirth, may not be required to work on night shifts or overtime. In *Switzerland*,[142] pregnant women may not be employed between 8 p.m. and 6 a.m. during the eight weeks preceding delivery. Similarly, in *Namibia*,[143] female employees may not be required or allowed to engage in night work during a period of eight weeks before the expected date of their confinement and eight weeks after such confinement or during such other period certified by a medical practitioner to be necessary for their health or that of their child. In *Nicaragua*,[144] women may not be engaged in night work after the completion of the sixth month of pregnancy, while in *Romania*,[145] pregnant women as from the sixth month as well as breastfeeding mothers may not be employed at night. Similarly, in *Seychelles*,[146] a female worker from the time she is six months pregnant and up to three months after her confinement, may not be employed at night between the hours 10 p.m. and 5 a.m.

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[134] Maternity Protection Act of 17 April 1979, s. 6(2), (3). However, pregnant women and nursing mothers employed in transport, musical and theatrical performances, entertainment and festival activities, film-making and cinemas, medical and nursing establishments or in multiple shift undertakings, may work until 10 p.m., and upon specific authorization of the labour inspectorate until 11 p.m., provided that the working shift is immediately followed by an uninterrupted rest period of 11 hours.

[135] Federal Act on Maternity Protection of 17 January 1997, s. 8(1), (3), (6). By way of exception, women in the first four months of pregnancy and nursing mothers may be employed in the hotel and catering sector until 10 p.m. and as performers in musical, theatrical and similar performances until 11 p.m. They can also milk livestock from 5 a.m. onwards in agriculture. The supervisory authorities may allow for further exceptions in individual cases but the protection of pregnant women and nursing mothers must be guaranteed in every case.

[136] Labour Act of 16 March 1971, as amended, s. 43. A pregnant worker may request to be exempted from night duties, i.e. work between 8 p.m. and 6 a.m., during the eight weeks before the expected date of childbirth without any formality, and upon the production of a medical certificate during the remaining period of pregnancy as well as during the four weeks following the end of the maternity leave.

[137] Labour Code, Act No. 65/1965, as amended up to 1996, s. 153(1).

[138] Labour Standards Law, No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, art. 66(3).

[139] Employment of Women Law, No. 5714-1954, s. 10.

[140] Labour Act of 5 July 1994, ss. 61, 63, and Decree of 28 June 1988 of the State Council adopting regulations governing labour protection for female staff members and workers, art. 7.

[141] Labour Code of 23 June 1994, art. 115(1).

[142] Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, arts. 35a(4), 35b(1). When possible, pregnant women normally working between 8 p.m. and 6 a.m. have to be assigned to day work. The same applies to women workers during the period between the eighth and sixteenth week after delivery.

102. In a few countries, a certain degree of flexibility has been built in maternity protection legislation allowing for exemptions from the prohibition basically upon the worker's request or consent. In *Slovenia*,[147] for instance, a female worker may not, in principle, perform night work during pregnancy and until her child reaches the age of 2 years. However, a female worker with a child under 1 year of age may perform work during the night on the basis of her written request, while female workers who have a child from 1 to 3 years old may be given work at night only with their previous consent. In the *Netherlands*,[148] women may not be required to work night shifts during pregnancy or for six months after confinement unless the employer can present convincing reasons why he/she cannot reasonably be expected to comply with such requirement. In *Mozambique*,[149] during the period of pregnancy and following confinement, working women are entitled to refuse to perform night work or overtime, and may not be moved from their usual workplace, as from the third month of pregnancy, unless they so request or it is in the interests of their condition. In *Singapore*,[150] a pregnant female worker is prohibited from working at night unless she has given her consent in writing, and she is not certified unfit by a medical practitioner to do night work.

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[143] Labour Act of 13 March 1992, s. 34(1).

[144] Labour Code, Act No. 185 of 30 October 1996, art. 52.

[145] Labour Code, Law No. 10 of 23 November 1972, art. 154.

[146] Conditions of Employment Regulations of 24 April 1991 (S.I. 34), s. 23(1). See also International Trade Zone (Conditions of Employment) Order of 31 January 1997 (S.I. 14), s. 18(1). The prohibition covers the period between 10 p.m. and 5 a.m. In addition, a female worker has the right to be transferred to other work or duties if at any time during pregnancy and up to three months after confinement she produces a medical certificate that a change in the nature of her work is necessary in the interest of her health or that of her child.

[147] Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 40, and Labour Relations Act of 29 March 1990, art. 78.

[148] Working Time Act of 23 November 1995, arts. 4:5(5), 4:7.

[149] Act No. 8/98 of 20 July 1998, art. 75(1b).

[150] Employment (Female Workmen) Regulations, 1988, No. S 101 of 26 April 1988, art. 3(1).

103. A few countries have adopted a new occupational safety and health approach to protection of pregnant workers based on the understanding that a blanket prohibition of night work for pregnant women and nursing mothers after confinement may not always serve a meaningful purpose since many types of occupation do not involve any particular risk for the health of pregnant workers or workers who have recently given birth. This is principally the case of most EU Member States whose legislation reflects the principles set out in Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. The legislation in the *United Kingdom*,[151] for instance, does not prohibit new or expectant mothers from working on night shifts. The relevant regulations are based rather on assessment of risk and provide for mandatory appropriate action by the employer if a new or expectant mother supplies a medical certificate identifying night work per se as being a risk to her health. Such action could consist in the outright suspension of the new or expectant mother from work for as long as is necessary for her health or safety. The recently revised maternity protection legislation of *Spain*[152] reflects the same principle. The working conditions and hours of work, including night or shift work, of pregnant women and women who have recently given birth must be so adjusted that they do not affect the health of expectant or nursing mothers. If such measures of adaptation are not adequate or are impracticable, the female employee may be transferred to another job or function, while in some cases it may even prove necessary to suspend her contract. Similarly, the labour legislation of *Denmark*[153] and *Finland*[154] prescribes that during the performance of the work attention must be paid to the age of the employee, the person's level of knowledge, work ability and other factors, and in this connection highly sensitive risk groups, including pregnant and breastfeeding employees, must be protected from risks that are especially hazardous to them. The employer must, therefore, assess whether the individual employee is exposed to effects that may imply a hazard to pregnancy or breastfeeding, and should prevent such hazards either through technical measures or measures relating to the planning of the work and the design of the workplace, including changes in working hours and limitations of night work. Likewise, in the *Dominican Republic*,[155] where as a result of pregnancy or childbirth the work performed by a woman is harmful to her health or that of her child, and this fact is certified by a medical practitioner, the employer must provide a change of work.

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[151] Management of Health and Safety at Work (Amendment) Regulations, 1999, art. 17. The term "new or expectant mother" means an employee who is pregnant, who has given birth within the previous six months, or who is breastfeeding. National legislation also confers a right to remuneration where a woman has been suspended on maternity grounds and gives her the right to make a complaint to an employment tribunal if her employer has failed to offer her any available suitable alternative work, or if the employer has failed to pay remuneration during a maternity suspension; see Employment Rights Act, 1996, ss. 68, 70. In addition, it would be unlawful for an employer to dismiss an employee or subject her to detriment because he is required to suspend her from work on maternity grounds; see Maternity and Parental Leave Regulations, 1999, arts. 19-20.

[152] Prevention of Labour Risks Law No. 31/95 of 8 November 1995, art. 26(1), as amended by Law No. 39/99 of 5 November 1999 regarding the reconciliation of work and family life, art. 10. See also Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 45(1d).

[153] Order No. 867 of 13 October 1984, as amended by Order No. 1117 of 17 December 1997, s. 8.

[154] Occupational Safety and Health Act, s. 10(a).

104. A similar situation prevails in *Australia*[156] where, according to the regulatory approach to the issue of occupational health protection of a pregnant woman or a recent mother which was adopted in Victoria, there is a general duty of care for the employer. If there is a risk to the health and safety of a pregnant woman or recent mother, the employer is required to eliminate, or control, that risk so far as is practicable. The term "practicable" is defined as having regard to the severity of the hazard or risk in question, the state of knowledge about the hazard or risk, the availability and suitability of ways to remove or mitigate the hazard or risk, and the cost of removing or mitigating the hazard or risk. According to labour legislation in *Greece*,[157] pregnant women working during pregnancy, after childbirth, or during a breastfeeding period of up to one year after childbirth and normally employed on a night shift, have to be assigned to a day work position on condition that they supply a medical certificate attesting that such a measure would be necessary for reasons related to their health and security. If the shift from night to day work is practically or objectively impossible, the women concerned have to be dispensed from work. In *Portugal*,[158] women who are pregnant, have recently given birth or are breastfeeding are entitled to be exempted from performing night work: (i) for a period of 112 days before and after childbirth; and (ii) during the remaining period of pregnancy or during the entire period of breastfeeding upon presentation of a medical certificate certifying that this is necessary for their health or for that of their child.

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[155] Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 235.

[156] Occupational Health and Safety Act, 1985. Analogous legislation has been adopted in other Australian jurisdictions. Most federal awards contain a non-night work specific standard of protection for employees who are eligible for maternity leave which provides that where an employee is pregnant and in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee may, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave. If the transfer to a safe job is not practicable, the employee may elect or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

[157] Presidential Decree No. 176/97 respecting measures to improve the security and health at work of working women during pregnancy, after birth, or during breastfeeding, art. 7.

[158] Act No. 4/84 of 5 April 1984 concerning maternity and paternity protection, as amended by Act No. 142/99 of 31 August 1999, art. 22(1).

105. Finally, it may be noted that the legislation of some of the countries where women's night work is still generally prohibited recognizes special protection to pregnant female workers. The labour laws of *Angola*,[159] for instance, specifically provide that night work of pregnant women may not be authorized under any circumstances, even in those exceptional situations such as *force majeure* or risk of deterioration of raw materials where the prohibition on night work ceases to apply.

IV. General prohibition of night work for girls and young women

106. In most countries there is an outright prohibition on the night employment of young persons, thus including girls and young women, under 18 years of age. This is the case in *Albania*,[160] *Argentina*,[161] *Austria*,[162] *Azerbaijan*,[163] *Barbados*,[164] *Belarus*,[165] *Belgium*,[166] *Belize*,[167] *Benin*,[168]

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[159] General Labour Act, No. 2/2000 of 11 February 2000, art. 272(1c).

[160] Labour Code Act, No. 7961 of 12 July 1995, art. 101.

[161] Labour Contract Law, No. 20.744 of 13 May 1976, art. 190.

[162] Federal Act of 1 July 1948 respecting the employment of children and young persons, as last amended by Act of 6 November 1997 (Text No. 126), s. 17. The prohibition covers the period between 8 p.m. and 6 a.m. However, employment of young workers who are at least 16 years of age is allowed in multiple shift undertakings with weekly shift changes; in catering establishments up to 10 p.m.; for musical, theatrical or other similar performances and film, television or sound recording sessions up to 11 p.m. Under certain conditions, the possibility of night duty assignment is also provided for apprentice bakers who have reached 15 years of age and for young persons undergoing professional health and nursing training.

[163] Labour Code of 1 February 1999, art. 254(1). For employees under the age of 18, night work is defined as the hours between 8 p.m. and 7 a.m.

[164] Employment (Miscellaneous Provisions) Act of 24 March 1977, arts. 7, 13. The prohibition on night work extends from 6 p.m. and 7 a.m.

[165] Labour Code of 26 July 1999 (Text No. 432), ss. 117(4), 276.

[166] Labour Act of 16 March 1971, as amended by Act of 17 February 1997 on night work, ss. 34bis, 34ter. By night work, in this regard, is understood any work performed between 8 p.m. and 6 a.m. Young workers above 16 years of age may exceptionally work until 11 p.m. in the case of imminent accident, urgent repair work, or unforeseen necessity with the prior consent of the workers' organization concerned. In any case, a minimum rest period of 12 consecutive hours must elapse between finishing work and returning to work in the case of young workers.

[167] Labour Act, Ch. 234, s. 161(1b).

[168] Law No. 98-004 of 27 January 1998 to establish a Labour Code, art. 153.

Bolivia,[169] *Botswana,*[170] *Brazil,*[171] *Bulgaria,*[172] *Burkina Faso,*[173] *Burundi,*[174] *Cameroon,*[175] *Central African Republic,*[176] *Chad,*[177] *Chile,*[178] *Colombia,*[179] *Costa Rica,*[180] *Côte d'Ivoire,*[181] *Czech Republic,*[182] *Democratic*

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[169] Act No. 1403 of 18 December 1992 establishing the Minor's Code, art. 146, and Act No. 2026 of 27 October 1999 establishing the Code of Children and Adolescents, art. 147. See also Supreme Decree of 26 May 1939 to issue the Labour Code, art. 60, and Decree of 23 August 1943 regulating the General Labour Act, art. 53. The prohibition covers the period between 6 p.m. and 6 a.m. Regarding non-industrial occupations, minors under 18 years of age may not work during a period of 11 consecutive hours including the interval from midnight to 5 a.m.

[170] Employment Act of 1982, ss. 2, 109. However, young persons may exceptionally be required to work at night: (i) in the case of an emergency which could not reasonably have been foreseen and prevented, which is not of a periodical character and which interferes with normal operation of the undertaking; and (ii) if the young persons are so employed under a contract of apprenticeship or indenture to learn.

[171] Federal Constitution, as amended by the constitutional amendment No. 20 of 15 December 1998, art. 7(XXXIII).

[172] Labour Code of 24 March 1986, as amended to 1996, art. 140(4).

[173] Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, art. 83, and Decree No. 539/ITLS/HV of 29 July 1954 concerning the employment of children, arts. 3, 4.

[174] Labour Code, Decree No. 1/037 of 7 July 1993, s. 119.

[175] Labour Code, Law No. 92/007 of 14 August 1992, ss. 81, 82.

[176] Act No. 61-221 of 2 June 1961 establishing the Labour Code, art. 121, and Decree No. 3157 of 8 October 1951 concerning the employment of children, arts. 17, 18.

[177] Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, arts. 205, 208.

[178] Labour Code of 7 January 1994, art. 18. The prohibition refers to work performed between 10 p.m. and 7 a.m. and applies to industrial and commercial undertakings, other than undertakings in which only members of the same family are employed. Also exempted from the prohibition are young workers over 16 years of age working in industrial and commercial undertakings of continuous operation, as specified by Ministerial Order.

[179] Labour Code, as amended by Law No. 13 of 4 January 1967, art. 4, and Code of Minors, Decree No. 2737/89, art. 242(4). However, young persons between 16 and 18 years of age may be authorized to work until 8 p.m. on condition that regular school attendance is not affected.

[180] Childhood and Adolescence Law No. 7739 of 6 January 1998, arts. 2, 95. See also Labour Code of 1943, as amended up to 1996, art. 88(a). The prohibition refers to a 12-hour period between 7 p.m. and 7 a.m.

[181] Act No. 95-15 of 12 January 1995 establishing the Labour Code, arts. 22.2, 22.3, and Act No. 96-204 of 7 March 1996 regarding night work, art. 4. The prohibition applies to the period of 12 consecutive hours from 6 p.m. to 6 a.m.

[182] Labour Code, Act No. 65/1965, as amended up to 1996, s. 166(1). As an exception, adolescents older than 16 years of age may perform night work not exceeding one hour, if such is necessary for reasons of vocational training.

Republic of the Congo,[183] *Dominica,*[184] *Ecuador,*[185] *El Salvador,*[186] *Estonia,*[187] *Ethiopia,*[188] *France,*[189] *Gabon,*[190] *Germany,*[191] *Ghana,*[192]

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[183] Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, ss. 106, 107, and Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, s. 27. The daily rest period for children under 18 years of age may not be less than 12 consecutive hours including an interval of not less than seven consecutive hours falling between 7 p.m. and 7 a.m.

[184] Employment of Women, Young Persons and Children Act, 1991, art. 7(1), (2a), (3). However, the prohibition does not apply to young persons over the age of 16 years employed in the manufacture of raw sugar, or in cases of emergencies which could not have been controlled or foreseen.

[185] Labour Code of 29 September 1997, art. 137.

[186] Labour Code of 15 June 1972, as amended by Decree No. 859 of 21 April 1994, art. 116.

[187] Working and Rest Time Act of 15 December 1993, s. 19(2).

[188] Labour Proclamation No. 42/1993, arts. 89(1), 91(1). The prohibition applies to young persons who have attained the age of 14 years but are under the age of 18 years and refers to work carried out between 10 p.m. and 6 a.m.

[189] Labour Code, arts. L.213-7, L.213-8, L.213-10 and R.117 bis-1. The prohibition refers to the eight-hour period between 10 p.m. and 6 a.m. Derogations from this rule may be accorded by the labour inspectorate to commercial establishments, places of entertainment, and to bakeries in relation to apprentices over 16 years of age whose work starts not earlier than 4 a.m. Young male workers between 16 and 18 years of age may also be exempted in case of necessity for the purpose of preventing imminent accidents or carrying out repair work.

[190] Act No. 3/94 of 21 November 1994 establishing the Labour Code, arts. 166, 167, 168(c), 169. However, young workers above 16 years of age may be employed during the night in certain industries of continuous operation such as the steel, glass or sugar industry.

[191] Youth Employment Protection Act of 12 April 1976, ss. 1, 14. The prohibition refers to work performed between 8 p.m. and 6 a.m. with some exceptions in certain fields. In no case may such persons be employed after 11.30 p.m. and before 4 a.m.

[192] Labour Decree, 1967, ss. 45(1), 47. Night, in this respect, means a period of 12 consecutive hours including the interval between 10 p.m. and 7 a.m. The general ban on night work of minors does not apply to young persons between 16 and 18 years of age, on condition that the written permission of the chief labour officer is first obtained, (i) in a case of emergency which could not have been controlled or foreseen, is not of a periodical character and interferes with the normal working of the establishment, and (ii) in a case of serious emergency, when the public interest demands it.

Guatemala,[193] *Guinea,*[194] *Guinea-Bissau,*[195] *Haiti,*[196] *Hungary,*[197] *Indonesia,*[198] *Japan,*[199] *Kenya,*[200] *Republic of Korea,*[201] *Kuwait,*[202] *Latvia,*[203] *Lebanon,*[204] *Libyan Arab Jamahiriya,*[205] *Lithuania,*[206] *Luxembourg,*[207]

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[193] Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995, art. 148(c). The prohibition refers to the period between 6 p.m. and 6 a.m.

[194] Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, ss. 148, 149 and Decree No. 2791/MTASE/DNTLS/96 of 22 April 1996 respecting child labour, arts. 2(8), 10, 11. Young workers must have a minimum rest period of 12 hours between 6 p.m. and 6 a.m. The only possible exception relates to young persons between 16 and 18 years of age engaged in repair work in the case of an accident or imminent danger.

[195] General Labour Act No. 2/86 of 5 April 1986, art. 152. Night work may exceptionally be authorized for minors above 16 years of age for reasons of vocational training and on condition that their physical or mental well-being is not affected.

[196] Labour Code, Decree of 24 February 1984, art. 334. In this respect, the term night means a period of at least 12 consecutive hours. For minors under 16 years of age, this period comprises the interval between 10 p.m. and 6 a.m., while for those between 16 and 18 years of age it needs to cover an interval of at least seven consecutive hours between 10 p.m. and 7 a.m.

[197] Act No. 22 of 3 March 1992 on the Labour Code, art. 121(1).

[198] Law on Manpower Affairs, No. 25 of 3 October 1997, arts. 96(3b), 97(1c), and Act No. 1 of 6 January 1951, art. 4. Children may not be employed between 6 p.m. and 6 a.m., while young persons who have attained 14 years of age but are under 18 years of age are prohibited from working at certain times during the night except when this is part of job education and training.

[199] Labour Standards Law, No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, art. 61(1). However the prohibition does not apply in the case of males who have attained 16 years of age and who are employed on shift work.

[200] Employment Act, No. 2 of 15 April 1976, s. 28(1).

[201] Labour Standards Act No. 5309 of 13 March 1997, art. 68. The prohibition does not apply, however, if the consent of the worker concerned and the approval of the Ministry of Labour have been obtained.

[202] Act No. 38 of 1964 regarding employment in the private sector, art. 21. No work may be performed between sunset and sunrise. However, according to arts. 28, 29 of the Bill to amend Act No. 38 of 1964 which is now in the process of adoption, young persons between the ages of 15 and 18 could not be employed between 9 p.m. and 6 a.m.

[203] Labour Code, as amended to 25 October 1994, arts. 51(1), 186.

[204] Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, arts. 23, 25. With the exception of vocational training and charity institutions, young persons may not be required to work from 7 p.m. to 7 a.m.

[205] Labour Code, Act No. 58-2970 of 1 May 1970, art. 94. The prohibition refers to the period between 8 p.m. and 7 a.m.

[206] Act No. I-266 of 7 October 1993 on labour protection (occupational safety), as amended to 3 November 1994, arts. 60, 61. Daily uninterrupted rest time for persons under 16 years of age must be at least 14 hours, and at least 12 hours for persons from 16 to 18 years of age. This rest time must be between the hours of 8 p.m. and 8 a.m.

[207] Act of 28 October 1969 respecting the protection of children and young workers, art. 16. In this respect, "night" means a period of at least 12 consecutive hours including the interval between 8 p.m. and 6 a.m. In the case of undertakings operating continuous processes, or young

Mali,[208] *Mauritania,*[209] *Mauritius,*[210] *Mexico,*[211] *Republic of Moldova,*[212] *Namibia,*[213] *Nicaragua,*[214] *Niger,*[215] *Norway,*[216] *Panama,*[217] *Paraguay,*[218] *Peru,*[219] *Poland,*[220] *Qatar,*[221] *Romania,*[222] *Russian Federation,*[223]

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persons working as apprentices in hotels, bars and restaurants, work may be permitted until 10 p.m.

[208] Act No. 92-020 of 23 September 1992 establishing the Labour Code, art. L.186 and Decree No. 96-178/P-RM of 13 June 1996 to make regulations under the Labour Code, art. D.189-16. The law provides for a minimum period of night rest of 12 hours including the interval between 9 p.m. and 5 a.m.

[209] Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, ss. 7-9. Young workers must have a period of night rest of 11 consecutive hours including the interval between 10 p.m. and 5 a.m.

[210] Labour Act, 1975, s. 15(3a). The prohibition extends to the period between 6 p.m. and 6 a.m.

[211] Federal Labour Act, as amended up to 1 October 1995, art. 175(II) and Political Constitution of the United Mexican States, art. 123A(II). Young persons under 18 years of age may not be assigned to industrial work during the night, whereas young persons under 16 years of age may not be employed in any work after 10 p.m.

[212] Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 185.

[213] Labour Act of 13 March 1992, s. 34(1).

[214] Childhood and Adolescence Act, No. 287 of 27 May 1998, art. 74. Night means, in this respect, the ten-hour period from 8 p.m. to 6 a.m.

[215] Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code, arts. 96, 97. The minimum nightly rest period is of 11 consecutive hours.

[216] Ordinance No. 554 of 30 April 1998 respecting work of children and of youth, ss. 10, 11 and Act No. 4 of 4 February 1977 respecting workers' protection and the working environment, as subsequently amended, last by Act No. 19 of 28 February 1997, s. 37. Young persons must have an off-duty period of at least 12 hours between two working periods, including in the case of youths between 15 and 18 years of age the period from 10 p.m. to 6 a.m., or from 11 p.m. to 7 a.m., and in the case of children under 15 years of age the period from 9 p.m. to 7 a.m. Among the several exceptions, children may perform cultural or artistic work between 8 p.m. and 11 p.m.

[217] Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995, art. 120(1). The prohibition covers the period between 6 p.m. and 8 a.m.

[218] Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, promulgating the Labour Code, art. 122. This provision does not apply to domestic employees working in the employer's house.

[219] Code on Children and Adolescents, Law No. 27337 of 21 July 2000, art. 57. The prohibition covers the period between 7 p.m. and 7 a.m. Night work by young persons between 15 and 18 years of age may be exceptionally authorized by judicial decision provided that it does not exceed four hours per day.

[220] Act of 26 June 1974 promulgating the Labour Code, arts. 190(1), 203(1). Young workers must have a rest from work, including night rest, of at least 14 hours.

[221] Labour Law No. 3 of 1962, arts. 2(4), 43. The prohibition refers to any work performed between sunset and sunrise.

[222] Labour Code, Law No. 10 of 23 November 1972, art. 161(1).

[223] Labour Code of 9 December 1971, as amended up to 30 April 1999, arts. 48, 177.

Rwanda,[224] *Saudi Arabia,*[225] *Senegal,*[226] *Seychelles,*[227] *Slovakia,*[228] *Spain,*[229] *Sri Lanka,*[230] *Suriname,*[231] *Swaziland,*[232] *Thailand,*[233] *Togo,*[234] *Turkey,*[235] *Ukraine,*[236] *United Kingdom (Falkland Islands,*[237] *Gibraltar,*[238] *Guernsey*[239]*),*

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[224] Labour Code, Act of 28 February 1967, art. 120. However, it is permitted to employ minors in non-industrial establishments of a family nature where only the parents and their children are occupied for work which is not considered to be noxious, harmful or dangerous.

[225] Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 161. Night is meant to comprise an interval of at least 11 hours between sunset and sunrise.

[226] Order No. 3724/IT of 22 June 1954 regarding child labour, art. 3.

[227] Conditions of Employment Regulations of 24 April 1991 (S.I. 34), s. 22(2). The prohibition covers the period between 10 p.m. and 5 a.m.

[228] Act No. 451/1992 providing for the Labour Code, s. 166(1). As an exception, young persons older than 16 years of age may perform night work not exceeding one hour if such is necessary for their vocational training.

[229] Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 6(2).

[230] Employment of Women, Young Persons and Children (Amendment) Act, No. 32 of 1984, ss. 2(1), 3(3), 4, 34. In this regard, night means at least 12 consecutive hours which may not end later than 6 a.m. and which: (i) in the case of persons under the age of 16 years, must include the period of eight consecutive hours between 10 p.m. and 6 a.m., (ii) in the case of persons over 16 years, must include at least a seven-hour interval between 10 p.m. and 6 a.m., and (iii) in the case of persons over 16 years and who are undergoing vocational training in the baking industry, must include the seven consecutive hours falling between 9 p.m. and 4 a.m. The Minister may, after consultation with the employers' and workers' organizations concerned, if any, authorize, by Order published in the *Gazette*, the employment during the night of male young persons who have attained the age of 16 years but are under the age of 18 years for purposes of apprenticeship or vocational training in such industrial undertakings required to be carried on continuously as is or are specified in the Order.

[231] Labour Act, 1963, as amended by Decree No. E-41 of 12 September 1983, art. 20. The prohibition applies to young persons between 14 and 18 years of age. No definition of "night" is given regarding this prohibition.

[232] Employment Act No. 5 of 26 September 1980, ss. 97(2b), 98(1). The prohibition refers to employment between the hours 6 p.m. and 7 a.m.

[233] Labour Protection Act (B.E.2541) of 12 February 1998, art. 47. The only exception refers to young workers under 18 years of age who are performers in movies, plays or other similar forms of exhibition work.

[234] Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 110, and Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children, arts. 7, 8. The law provides for a minimum nightly rest period of 11 consecutive hours including the period from 8 p.m. to 6 a.m.

[235] Labour Act No. 1475 of 25 August 1971, art. 69

[236] Labour Code of 11 April 1994, art. 55.

[237] Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

[238] Employment Ordinance. See also Employment of Women, Young Persons and Children (Amendment) Ordinance, 1978.

[239] Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

Venezuela,[240] and *Zambia*,[241] where persons of either sex under the age of 18 may not be employed during the night in all establishments.

107. According to available information, the minimum period of compulsory night rest for young workers varies from seven to 13 hours. This night period is defined either by reference to fixed hours or as an overall amount of hours which needs to cover a specific interval. In *Morocco*,[242] children under the age of 16 years may not be employed between 10 p.m. and 5 a.m., while in *Cuba*,[243] the prohibition of night work applies to young persons between 15 and 16 years of age and covers an eight-hour period between 10 p.m. and 6 a.m. In *Algeria*,[244] young persons under 19 years of age may not be employed between 9 p.m. and 5 a.m. In *Iraq*,[245] young persons between 15 and 17 years of age are not allowed to work between 9 p.m. and 6 a.m. In *Yemen*,[246] it is forbidden to make young persons under 15 years of age work during the night, that is between 8 p.m. and 5 a.m., except in those jobs as may be specified by order of the Minister of Labour. Likewise, in *Viet Nam*[247] young workers under 18 years of age may only be employed at night in certain categories of occupations determined by the Ministry of Labour, Invalids and Social Affairs. In *Switzerland*,[248] young workers under 19 years of age are prohibited to work at night. However, derogations to this prohibition may be granted in favour of young persons above 16 years of age, especially for reasons of vocational training. In *Jordan*,[249] the employment of minors between 8 p.m. and 6 a.m. or in works involving danger, hardship and health hazards is prohibited, while in

[240] Labour Act of 27 November 1990, as modified by Act of 19 June 1997, art. 257. Nonetheless, young persons between 16 and 18 years of age may work at night in family undertakings, in cases of *force majeure*, or when the national interest so demands and the authorization of the Labour Inspector is first obtained; see Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 190.

[241] Employment of Women, Young Persons and Children Act (Cap. 505) of 13 April 1933, as amended to 1991, ss. 8, 9, 10. The term "night" is defined as a period of at least 11 consecutive hours, including the interval between 10 p.m. and 5 a.m. The prohibition does not apply to: (i) young persons employed in family undertakings; (ii) persons between the ages of 16 and 18 years employed in industrial undertakings or works which by reason of the nature of the process are required to be carried on continuously day and night; (iii) persons between the ages of 16 and 18 years in cases of emergency which could not have been controlled or foreseen.

[242] Decree of 2 July 1947 to regulate employment, arts. 12, 13.

[243] Decree No. 101 of 3 March 1982 establishing regulations on protection and hygiene at work, arts. 128, 129.

[244] Act No. 90-11 of 21 April 1990 respecting labour relations, art. 28.

[245] Act No. 71 of 27 July 1987 promulgating the Labour Code, ss. 59(b), 91(1), (2).

[246] Labour Code, Act No. 5 of 1995, arts. 2, 48(3), 73(1).

[247] Labour Code of 23 June 1994, art. 122(2).

[248] Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, arts. 29(1), 31(4), and Order No. 1 of 10 May 2000 relative to Federal Labour Act, art. 58.

[249] Labour Code, Law No. 8 of 1996, arts. 73-75.

the *Syrian Arab Republic*,[250] young persons under 15 years of age may not be employed between 7 p.m. and 6 a.m., with the exception of persons engaged in agriculture or domestic workshops where only members of the family are employed. In *Angola*,[251] minors who have not reached 16 years of age may not engage in night work between 8 p.m. and 7 a.m., while in *Egypt*,[252] juveniles, defined as male or female youths of an age of 12 complete years up to 17 complete years, are not allowed to work between 7 p.m. and 6 a.m. Similarly, in *Bahrain*,[253] adolescents between 14 and 16 years of age may not be employed during a period of not less than 11 hours between sunset and sunrise. In *India*,[254] no child (person who has not completed his 14th year of age) may be permitted or required to work between 7 p.m. and 8 a.m. In *Pakistan*,[255] no child (person who has not completed his 15th year of age) or adolescent (person who has not completed his 17th year) may be permitted or required to work in a factory between 7 p.m. and 6 a.m. provided that the Government may, by notification to the *Official Gazette* in respect of any class of factories, vary these limits to any span of 13 hours between 5 a.m. and 7.30 p.m. In *Papua New Guinea*,[256] young persons under 16 years of age may not be employed between 6 p.m. and 6 a.m. In the *United Arab Emirates*,[257] no young persons may be employed in industrial undertakings, the term night meaning in this respect a period of not less than 12 consecutive hours, including the period from 8 p.m. to 6 a.m. Similarly, in the *Dominican Republic*,[258] young persons under 16 years of age are prohibited from engaging in night work during a period of 12 consecutive hours which cannot start after 8 p.m. or terminate before 6 a.m. In the *Netherlands*,[259] the employer is under the obligation to organize work in such a way that young workers have an uninterrupted rest period of at least 12 hours in any period of 24 consecutive hours, which must include the period between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m. In the *United States*,[260] child workers between 14 and 16 years of age may not be employed between 7 p.m. and 7 a.m., except during the summer when they may be employed until 9 p.m. This rule, however, does not apply to young persons working in agriculture. In *Eritrea*,[261] it is forbidden to let minors work after 10 p.m.

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[250] Law No. 91 of 5 April 1959 establishing the Labour Code, arts. 125, 129.

[251] General Labour Act No. 2/2000 of 11 February 2000, art. 287(4).

[252] Labour Code promulgated by Act No. 137 of 1981, arts. 143, 146.

[253] Legislative Decree No. 23 of 16 June 1976 promulgating the Labour Law for the Private Sector, as amended by the Legislative Decree No. 14 of 1993, arts. 49, 52.

[254] Child Labour (Prohibition and Regulation) Act, No. 61 of 23 December 1986, s. 7(4). See also Factories Act No. 63 of 23 September 1948, as amended, ss. 70(1), 71(1b). Adolescents who have not attained the age of 17 years may not be allowed or required to work between 7 p.m. and 6 a.m.

[255] Factories Act, 1934, as amended to 1987, ss. 2, 54(3) and Employment of Children Act, 1991, ss. 2, 7(4).

[256] Employment Act No. 54 of 21 August 1978, s. 105(1). The only exception is provided for young persons between 16 and 17 years of age who are employed in family undertakings.

[257] Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 23.

[258] Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 246.

[259] Working Time Act of 23 November 1995, art. 5:5(1).

108. In several countries, national legislation draws a distinction between children and young persons applying different restrictions to each of the two age groups. In *Denmark*,[262] there is a prohibition on the night employment of young persons aged between 13 and 15 years, or persons covered by the compulsory schooling requirement. In this respect, night is defined as the period between 8 p.m. and 6 a.m. As regards young persons who have reached the age of 15 years and who are no longer engaged in compulsory schooling, are not allowed to work between 10 p.m. and 6 a.m., unless otherwise explicitly regulated. In *Malaysia*,[263] children under the age of 14 may not be required or permitted to work between 8 p.m. and 7 a.m. except for those engaged in employment in any public entertainment, while young persons under 16 years of age may not be employed between 8 p.m. and 6 a.m. except for those engaged in employment in an agricultural undertaking or any employment in a public entertainment. The Government of *Portugal*[264] has reported that night work is prohibited for minors under 16 years of age in any sector of economic activity, and in this respect night work includes the period between 8 p.m. and 7 a.m. As regards young persons of 16 and 17 years of age, they cannot in principle perform night work in all sectors between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m. In *Slovenia*,[265] young persons under 16 years of age are not permitted to work between 10 p.m. and 6 a.m., whereas workers between 16 and 18 years of age are not permitted to work between 11 p.m. and 6 a.m. In *Cyprus*,[266] the law prohibits the employment of children under the age of 16 in any occupation from 7 p.m. to 6 a.m. as well as the employment of young persons between 16 and 18 years of age in any occupation from 10 p.m. to 6 a.m. or between 11 p.m. and 7 a.m. In *Finland*, there is a prohibition for young persons under 15 years of age between 8 p.m. and 8 a.m., whereas in the case of young workers between 15 and 18 years of age working hours must not fall between 10 p.m. and 6 a.m. However, it is possible for workers aged 15 to work until midnight in two-shift work at jobs approved and supervised by a public authority and held for the purpose of vocational training. In *Israel*,[267] young persons under the age of 18 to whom the Compulsory Education Law 5709-1949 applies may not work between 8 p.m. and 8 a.m., while those youths to whom the Compulsory Education Law does not apply are not permitted to work between 10 p.m. and 6 a.m.

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[260] Code of Federal Regulations, para. 570.35(a)(6).

[261] Labour Law No. 8/1991.

[262] Order No. 516 of 14 June 1996 respecting work by young persons, ss. 22, 39. Various exceptions are provided for different types of work e.g. bakeries, warehouses, sale rooms, petrol stations, theatres and cinemas, restaurants and hotels, farming and stock-raising.

[263] Children and Young Persons (Employment) Act, 1966, ss. 1A(1), 5(1a), 6(1a).

[264] Legislative Decree No. 409/71 of 27 September 1971, as amended by Act No. 58/99 of 30 June 1999, art. 33. Subject to authorization, young persons under 17 years of age may perform night work in specific sectors of activity, except during the period between midnight and 5 a.m. Night work during the latter period is only permitted as long as it is justified for objective reasons in activities of a cultural, artistic, sporting, or advertising nature. The above prohibitions do not apply if the night work is indispensable due to unusual or unforeseen events or to exceptional and unavoidable circumstances, as long as there are no other available workers; in such cases, the night work cannot exceed five consecutive days and the young persons are entitled to a compensatory rest period of the same number of hours.

[265] Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, art. 73.

[266] Employment of Children and Young Persons (Amendment) Law, No. 87(I) of 1999, s. 6. Young persons may, however, be exempted from the prohibition when employed for artistic,

109. In *Malawi*,[268] children under the age of 12 years may not be employed at night; young persons under the age of 14 years may not be employed at night in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed except in so far as employment involves light work; and young persons under the age of 16 may not be employed at night in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed provided that males may be so employed under licence issued by the Governor. In *Barbados*,[269] children under the age of 15 years are prohibited from working during the night in any undertaking whatsoever, whereas young persons who have reached 15 years but have not reached 18 years of age may not be employed in any industrial undertaking during the night or in any work that is likely to cause injury to their health, safety or morals.

110. In some cases, different time and age restrictions apply to specific branches of activity or occupation. The Government of *Tunisia*[270] has reported

scientific or training purposes during a public entertainment performance in accordance with the relevant authorization issued by the Minister of Labour.

[267] Youth Labour Law 5713-1953, s. 24. The Minister of Labour and Social Welfare may authorize exceptions especially for reasons of vocational training, in the case of seasonal agricultural work or shift work in an industrial enterprise, or when a state of emergency exists.

[268] Employment of Women, Young Persons and Children Act, No. 22 of 1939, ss. 2, 3(1a), 4(a), 5.

[269] Employment (Miscellaneous Provisions) Act of 24 March 1977, arts. 8, 13. Young persons may be authorized, however, by decision of the Minister, to work during the night for the purposes of apprenticeship or vocational training in a specified industry, in which case they will be granted a period of rest of at least 13 consecutive hours between two periods of work.

[270] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, arts. 65-67, 74. However, young persons who have reached 16 years but have not reached 18 years of age may be employed at night: (i) in case of *force majeure*; (ii) when employed as apprentices in bakeries and their training so requires; (iii) upon authorization of the chief labour inspector for training purposes in specific industries; (iv) for the

that, in respect of non-agricultural activities, children below 14 years of age are not allowed to work at night during a period of 14 consecutive hours comprising the interval between 8 p.m. and 8 a.m., while young persons who are more than 14 but less than 18 years of age may not be employed during a period of 12 consecutive hours comprising the interval between 10 p.m. and 6 a.m. As regards agricultural activities, young workers under 18 years of age may not be employed between 10 p.m. and 5 a.m., and must enjoy not less than 12 consecutive hours of night rest if they are under 16 years of age and ten consecutive hours if they are between 16 and 18 years of age. In *Bangladesh*,[271] persons who have not reached 16 years of age and adolescents between 16 and 18 years of age are not allowed to work in factories between 7 p.m. and 7 a.m. Regarding commercial establishments, young persons between 16 and 18 years of age may not be employed from 8 p.m. to 7 a.m., while in tea plantations, children (persons who have not reached 15 years of age) may not be employed between 7 p.m. and 6 a.m. The Government of *Australia*[272] has reported that some awards at the federal level prohibit the employment of junior employees under 21 years of age during a period of night. The Federal Meat Industry Award of 1981, for instance, provides that no junior male under the age of 18 years may be employed on night shifts, and no junior female may be employed on shift work. Similar restrictions are also to be found in awards of state or territory jurisdictions. In Queensland, for instance, under the Fast Food Industry Award, no employee under the age of 18 years may work, or be permitted to work, later than 8 p.m. without parental consent, while in Victoria, under the Textile Industry Award 2000 and Clothing Trades Award, no apprentice under the age of 18 years may be employed on any shift other than the day shift.

111. In conclusion, it would seem that practically all States whose reports are examined here have enacted legislation prohibiting or restricting the employment of minors during the night. On the whole, the scope of these laws and regulations appears to reflect the standards laid down in the Night Work of Young Persons (Industry) Convention, 1919 (No. 6), and the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90). Recommendation on the Worst Forms of Child Labour, 1999 (No. 190), also recommends that work during the night by young persons under 18 years of age be considered as hazardous, and therefore one of the worst forms of child labour to be eradicated in terms of Convention No. 182. The analysis of the information communicated by the governments leads to the conclusion that member States

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needs of artistic performances subject to specific authorization of the chief labour inspector and on condition that no work after midnight is involved.

[271] Factories Act, 1965, art. 70(1b); Shops and Establishments Act, 1965, art. 23; Tea Plantations Labour Ordinance, 1962, art. 22. See also Employment of Children Act, 1938, art. 3(2).

[272] Textile Industry Award 2000, s. 19.11, and Clothing Trades Award 1999, s. 20.10.

are much less inclined to abolish, modify, or otherwise relax the prohibition on night work of young persons than the prohibition, if any, applicable to adult women workers.

V. The definition of night

112. The duration of minimum compulsory night rest for women was set out in common Article 2(1) of Conventions Nos. 4 and 41 to be a period of at least 11 consecutive hours including the interval between 10 p.m. and 5 a.m. It was slightly redrafted in Article 2 of Convention No. 89 to signify a period of at least 11 consecutive hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between 10 p.m. and 7 a.m. To enhance the adaptability of the latter Convention to differing national conditions, Article 2 further provided that the competent authority could prescribe different intervals for different areas, industries, undertakings or branches of industries, but should consult the employers' and workers' organizations concerned before prescribing an interval beginning after 11 p.m. In practice, there is an extreme diversity in the legal prescriptions setting the limits of the prohibition on night work. The duration of the ban period varies from six to 12-and-a-half hours, but most States tend to opt for a night rest period for women between seven and nine hours on the average. In general, longer periods which in some cases stretch to up to 14 consecutive hours, are provided for working children and young persons. Some countries prefer a general definition of the term "night work" instead of a specific designation of women's obligatory night rest period.

113. In a number of countries, mostly those having ratified one of the Conventions under review, the duration of the night period with reference to employment of women reflects the standard prescribed in the Conventions, i.e. at least 11 hours of night rest including either the interval between 10 p.m. and 5 a.m. in accordance with the provisions of Conventions Nos. 4 and 41, or a seven-hour interval between 10 p.m. and 7 a.m. according to the terms of Convention No. 89. For instance, in *Belize*,[273] *Burkina Faso*,[274] *Central African*

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[273] Labour Act, Ch. 234, s. 160(1a).

[274] Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, arts. 80, 83. See also Decree No. 436/ITLS/HV of 15 July 1953 concerning night work hours, art. 1, and Decree No. 539/ITLS/HV of 29 July 1954 concerning the employment of children, arts. 3, 4.

Republic,[275] *Cyprus*,[276] *India*,[277] *Madagascar*,[278] *Mauritania*,[279] and *Niger*,[280] night with reference to the employment of women means at least 11 consecutive hours including the interval between 10 p.m. and 5 a.m. In *Slovakia*,[281] the uninterrupted rest period for women may not be shorter than 11 hours including the interval between 10 p.m. and 6 a.m. In *Austria*,[282] night within the meaning of the Federal Act proscribing the night work of women in industry is defined as a period of at least 11 consecutive hours, including the period between 8 p.m. and 6 a.m. In *Ghana*,[283] night work in relation to female workers means work at any time within a period of 11 consecutive hours including the seven consecutive hours occurring between 10 p.m. and 7 a.m. In the *United Arab Emirates*,[284] night work is prohibited during a period of not less than 11 consecutive hours, including a longer nine-hour interval from 10 p.m. to 7 a.m. In *Togo*,[285] the law provides for women workers a minimum nightly rest of 11 consecutive hours including the period from 8 p.m. to 6 a.m., while in *Congo*,[286] the 11 hours' rest must comprise the interval from 8 p.m. to 5 a.m. In *Iraq*,[287] women workers are entitled to a period of at least 11 consecutive hours of rest each day, and that period must include seven hours falling between 9 p.m. and 6 a.m.

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[275] Act No. 61-221 of 2 June 1961 establishing the Labour Code, arts. 120, 121. See also Decree No. 839 ITT of 22 November 1953 concerning night work hours, art. 1, and Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, arts. 3, 4.

[276] Employment of Women (During the Night) Law of 26 February 1932, s. 2. With respect to employment of children and young persons, night is defined as a period of at least 12 consecutive hours including the interval 10 p.m. to 5 a.m.

[277] Factories Act No. 63 of 23 September 1948, as amended, s. 66(1b). In principle, no woman may be employed in a factory between 7 p.m. and 6 a.m. Provincial governments may vary those limits without, however, authorizing the employment of any woman between 10 p.m. and 5 a.m.

[278] Act No. 94-029 of 25 August 1995 establishing the Labour Code, arts. 90, 92, and Decree No. 72-226 of 6 July 1972 regulating overtime and night work, art. 1.

[279] Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, ss. 7, 8, and Order No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 5.

[280] Decree No. 67-126/MFP/T of 7 September 1967 on labour regulations, art. 107.

[281] Act No. 451/1992 providing for the Labour Code, ss. 90(2), 99, 151.

[282] Federal Act of 25 June 1969 regarding women's night work, s. 3(2). For agricultural enterprises, the compulsory night rest period comprises the hours from 7 p.m. to 5 a.m.; see Agricultural Work Act, s. 62(2). For undertakings affected by seasonal factors or where extraordinary circumstances make it necessary, the labour inspectorate may, at a plant operator's request and following consultations with representatives of employers and workers, allow a variation in the duration of night to be defined as a period of ten consecutive hours including the interval between 10 p.m. and 6 a.m. This may be authorized for a period of two weeks for no more than 40 days in any calendar year; ibid., s. 3(3).

[283] Labour Decree, 1967, s. 47.

[284] Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 27.

[285] Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 110, and Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children, arts. 7, 8.

114. According to the legislation of certain countries, the 11-hour prohibition applies without reference being made to a specific interval of seven or more hours. In the case of *Djibouti*[288] and *Saudi Arabia*,[289] for instance, labour laws provide for a minimum period of night rest for women of 11 hours between sunset and sunrise. In certain countries, the limits of the 11-hour period are fixed and may not vary. In *Costa Rica*,[290] *Kuwait*,[291] *Pakistan*[292] and *Venezuela*,[293] for instance, the prohibition on night work of women refers to the period between 7 p.m. and 6 a.m., while in *Bahrain*,[294] *Bangladesh*,[295] *Egypt*,[296] *Guinea-Bissau*,[297] *Libyan Arab Jamahiriya*[298] and the *Syrian Arab Republic*[299] it covers the period between 8 p.m. and 7 a.m.

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[286] Act No. 45-75 of 15 March 1975 establishing the Labour Code, arts. 106, 109.

[287] Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(2).

[288] Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952, arts. 113, 114.

[289] Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 161.

[290] Labour Code of 1943, as amended up to 1996, arts. 135, 88. See also Childhood and Adolescence Law No. 7739 of 6 January 1998, art. 95.

[291] Ministerial Order No. 28 of 1976.

[292] Factories Act, 1934, as amended to 1987, s. 45(b), and Mines Act, 1923, s. 23-C(2).

[293] Decree No. 1,563 of 31 December 1973 on labour act regulations, arts. 209, 211, 212(a). By means of exception, women are allowed to work until 10 p.m. in spinning mills and textile factories provided that they are accorded an uninterrupted rest of at least 11 hours. In addition, women above 18 years of age employed in the daily press, hotels, restaurants, coffee shops, theatres and domestic services may work until midnight on condition that they have an uninterrupted rest of at least nine hours.

[294] Legislative Decree No. 23 of 16 June 1976 promulgating the labour law for the private sector, as amended by Legislative Decree No. 14 of 1993, art. 59.

[295] Factories Act, 1965, art. 65(1b); Shops and Establishments Act, 1965, art. 23; Tea Plantations Labour Ordinance, 1962, art. 22. The corresponding period for tea plantation works is from 7 p.m. to 6 a.m. With respect to factories, however, the Government may vary the limits to any span of ten-and-a-half hours between 8.30 p.m. and 5 a.m.

[296] Labour Code promulgated by Act No. 137 of 1981, art. 152.

[297] General Labour Act No. 2/86 of 5 April 1986, art. 60. However, night work in agriculture is defined as the period between 8 p.m. and 6 a.m.

[298] Labour Code, Act No. 58-2970 of 1 May 1970, art. 96.

[299] Law No. 91 of 5 April 1959 establishing the Labour Code, art. 131, and Order No. 666 of 20 July 1976.

115. Among the States parties to one or more of the Conventions under review, some apply shorter night periods than that prescribed in Article 2 of those instruments. For example, the night work ban for women extends to only seven hours between 11 p.m. and 6 a.m. in *Slovenia*,[300] and between 10 p.m. and 5 a.m. in *Senegal*.[301] In *Angola*,[302] *Philippines*[303] and *Swaziland*,[304] women are not allowed to work in any industrial undertaking between 10 p.m. and 6 a.m. A nightly rest of eight hours is also provided for in *Algeria*,[305] where women may not work between 9 p.m. and 5 a.m. Finally, *Bolivia*,[306] *Nicaragua*[307] and *Paraguay*,[308] have legislated a ten-hour rest period between 8 p.m. and 6 a.m., while *Rwanda*[309] applies a prohibition of the same length between 7 p.m. and 5 a.m.

116. In contrast, a limited number of countries have prescribed longer night periods exceeding the minimum of 11 hours required by the Conventions. This is the case of *Cameroon*[310] and *Tunisia*,[311] for instance, where night is defined as a period of 12 consecutive hours comprising the interval between 10 p.m. and 6 a.m. In *Chad*,[312] the minimum nightly rest for women and young workers under 18 years of age is 12 hours including the period between 10 p.m. and 5 a.m., while in *Guinea*,[313] the period of 12 consecutive hours of rest must comprise the interval between 8 p.m. and 6 a.m. Similarly, in *Haiti*[314] and *Oman*[315] night covers the period between 6 p.m. and 6 a.m., while in *Kenya*,[316] the prohibition of night work applies from 6.30 p.m. to 6.30 a.m. In *Gabon*[317] and *Mali*,[318] the law provides for a compulsory rest of at least 12 hours including the night work hours defined as the period from 9 p.m. to 6 a.m. and from 9 p.m. to 5 a.m. respectively. Finally, in the *Democratic Republic of the Congo*,[319] women workers are entitled to not less that 12 consecutive hours' rest, including a period of not less than seven consecutive hours falling between 7 p.m. and 7 a.m.

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[300] Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, art. 39. As the Committee of Experts has pointed out in the past, the legislation fails to give effect to the provisions of Convention No. 89 since the period of night rest is limited to seven consecutive hours.

[301] Labour Code, Law No. 97-17 of 1 December 1997, art. L.140, and Decree No. 70-182 of 20 February 1970 concerning night work hours, art. 1.

[302] General Labour Act No. 2/2000 of 11 February 2000, art. 320. It is recalled that, under the terms of previous legislation, the prohibition of women's night work covered a period of ten hours between 8 p.m. and 6 a.m. which has given rise to recurrent comments by the Committee over the last 15 years. It is noted that the most recently adopted new General Labour Act fails to bring national legislation into conformity with Convention No. 89 as the night period has further been reduced to eight hours.

[303] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 130. Furthermore, in any commercial or non-industrial undertaking or branch thereof, other than agricultural, women are not allowed to work between midnight and 6 a.m., while in any agricultural undertaking they may not be employed at night time unless they are given a period of rest of not less than nine consecutive hours. In a series of comments over the last 20 years, the Committee of Experts has been noting that the legislation is not in accordance with Convention No. 89 in that the prohibition of night employment of women covers a period of only eight hours and not 11 consecutive hours as laid down in Article 2 of the Convention.

[304] Employment Act No. 5 of 26 September 1980, s. 101(1).

[305] Act No. 90-11 of 21 April 1990 respecting labour relations, arts. 27, 29.

[306] Supreme Decree of 26 May 1939 to issue the Labour Code, art. 46.

[307] Labour Code, Act No. 185 of 30 October 1996, art. 50.

[308] Labour Code, Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, art. 195.

[309] Decree of 14 March 1957 respecting working hours, weekly rest and public holidays, art. 15.

[310] Labour Code, Law No. 92/007 of 14 August 1992, ss. 81, 82(2).

[311] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 66.

117. In some countries, the term "night" is defined differently depending on the season or geographical area. In *Lebanon*,[320] night is deemed to cover a nine-hour period between 8 p.m. and 5 a.m. from 1 May to 30 September and an 11-hour period between 7 p.m. and 6 a.m. from 1 October to 30 April. In *Benin*,[321] any work performed between 9 p.m. and 5 a.m. is considered to be night work but variations are possible according to seasons. In *Brazil*,[322] night work is defined as work performed between 10 p.m. and 5 a.m. for urban areas, and between 9 p.m. and 5 a.m. for rural areas. Finally, in *Viet Nam*,[323] night means the period from 10 p.m. to 6 a.m. for the northern provinces and the period from 9 p.m. to 5 a.m. for the southern ones.

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[312] Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, arts. 204, 208.

[313] Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, ss. 146, 149, and Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women, art. 1.

[314] Labour Code, Decree of 24 February 1984, art. 120.

[315] Labour Law enacted by Sultani Decree No. 34/73, s. 80.

[316] Employment Act No. 2 of 15 April 1976, s. 28(1).

[317] Act No. 3/94 of 21 November 1994 establishing the Labour Code, arts. 166, 169.

[318] Act No. 92-020 of 23 September 1992 establishing the Labour Code, arts. L.141, L.186.

[319] Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, ss. 107, 108, and Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, s. 16.

[320] Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, art. 26. Following the Committee of Experts' repeated comments to the effect that the nine-hour night rest period prescribed by art. 26 of the Labour Code was inconsistent with the Convention, which provides for a period of at least 11 consecutive hours, the Government has reported that a new draft Labour Code currently under preparation is expected to bring the definition of the term "night" into line with Article 2 of the Convention.

[321] Law No. 98-004 of 27 January 1998 to establish a Labour Code, art. 154.

[322] Decree No. 5.452 of 1 May 1943 concerning consolidation of labour acts, art. 73(1), (2). National legislation further specifies that during this period one hour corresponds to 52 minutes and 30 seconds.

[323] Labour Code of 23 June 1994, art. 70.

118. Among the countries which prohibit, in principle, the employment of women during the night, or night work in general, without however being parties to one of the Conventions under review, *Papua New Guinea*[324] applies a 12-hour night period between 6 p.m. and 6 a.m., while in *Dominica*[325] and the *United Kingdom (Falkland Islands,*[326] *Gibraltar,*[327] *Guernsey*[328]*)* night with reference to the employment of women means at least 11 consecutive hours including the interval between 10 p.m. and 5 a.m. In *Jordan*[329] and *Turkey*[330] the prohibition extends to a ten-hour period between 8 p.m. and 6 a.m. In *Barbados,*[331] the term "night" means the period between 9 p.m. and 7 a.m. In *Norway,*[332] the term "night" signifies the hours between 9 p.m. and 6 a.m. In the *Republic of Korea,*[333] *Latvia*[334] and the *Republic of Moldova,*[335] women's night work is prohibited from 10 p.m. to 6 a.m. In *Indonesia*[336] and *Malaysia,*[337] women's work in any industrial or agricultural undertaking is prohibited between 10 p.m. and 5 a.m. Finally, in *Switzerland,*[338] night work is defined as work performed between 11 p.m. and 6 a.m.

119. In those countries not prohibiting the night employment of women in general, "night work" or "night shift" is generally defined either as a fixed time period, or as a minimum amount of hours comprising a fixed interval. The periods so defined vary from six to 12 hours. In the *Netherlands*,[339] for instance, "night shift" means a shift worked entirely or partly between midnight and 6 a.m., while in *Finland*[340] and *Singapore*,[341] night work is considered to be work carried out between 11 p.m. and 6 a.m. In *Italy*,[342] night work is defined as activity carried out during a period of at least seven consecutive hours comprising the interval between midnight and 5 a.m. A seven-hour period between 10 p.m. and 5 a.m. is also prescribed in the legislation of *Antigua and Barbuda*,[343] *Burundi*,[344] *France*,[345] *Japan*,[346] *Mauritius*,[347] *Morocco* and *Seychelles*.[348] In the case of *Albania*,[349] *Azerbaijan*,[350] *Belarus*,[351] *Bulgaria*,[352] *Czech Republic*,[353] *Côte d'Ivoire*,[354] *Croatia*,[355] *Cuba*,[356]

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[324] Employment Act, No. 54 of 21 August 1978, s. 99(1).

[325] Employment of Women, Young Persons and Children Act 1991, art. 2.

[326] Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

[327] Employment Ordinance.

[328] Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

[329] Ministerial Order No. 4201 of 30 April 1997, art. 4. In two-shift working schedules, however, work may start at 5 a.m. and end at 11 p.m.

[330] Labour Act No. 1475 of 25 August 1971, art. 65(1). The Ministry of Labour may, when deemed necessary, issue regulations modifying the beginning and ending hours of night in connection with the nature of the work performed or the differences of climate and customs in various regions.

[331] Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 3.

[332] Act No. 4 of 4 February 1977 respecting workers' protection and the working environment, as subsequently amended, last by Act No. 19 of 28 February 1997, s. 42.

[333] Labour Standards Act No. 5309 of 13 March 1997, art. 68.

[334] Labour Code, as amended to 25 October 1994, art. 50.

[335] Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 52.

[336] Ordinance of 17 December 1925 on measures limiting child labour and night work for women, art. 3.

[337] Employment Act No. 265 of 1955, as amended to 1981, s. 34(1).

[338] Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, arts. 10(1), 17a(1), and Order No. 1 of 10 May 2000 relative to Federal Labour Act, art. 29.

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[339] Working Time Act of 23 November 1995, art. 1:7(d).

[340] Hours of Work Act No. 605 of 1996, s. 26. As an exception to the above definition, the general collective agreements for municipal officials (civil servants) and employees stipulate that work carried out between 10 p.m. and 7 a.m. is considered night work.

[341] Employment (Female Workmen) Regulations 1988, No. S 101 of 26 April 1988, art. 2.

[342] Legislative Decree No. 532 of 26 November 1999 on provisions relating to night work, art. 2(1)(a).

[343] Labour Code No. 14 of 1975, s. E2.

[344] Labour Code, Decree No. 1/037 of 7 July 1993, art. 117.

[345] Labour Code, art. L.213-2. Night may, however, be defined in collective agreements as any period of seven consecutive hours between 10 p.m. and 7 a.m.

[346] Labour Standards Law No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, arts. 64-3, 66(3), and Law No. 76 of 15 May 1991 concerning the welfare of workers who take care of children or other family members including childcare and family care leave, art. 16-2.

[347] Labour Act, 1975, s. 15(3)(a).

[348] Conditions of Employment Regulations of 24 April 1991 (S.I. 34), ss. 22(2), 23(1).

[349] Labour Code, Act No. 7961 of 12 July 1995, art. 80.

[350] Labour Code of 1 February 1999, art. 97(1).

[351] Labour Code of 26 July 1999 (Text No. 432), s. 117(1).

[352] Labour Code of 24 March 1986, as amended to 1996, art. 140(2).

[353] Labour Code, Act No. 65/1965, as amended up to 1996, s. 99(1).

[354] Act No. 96-204 of 7 March 1996 regarding night work, art. 1. Night work signifies any work performed during the period of eight consecutive hours from 9 p.m. to 5 a.m.

[355] Labour Act of 17 May 1995 (Text No. 758), art. 51. As regards agriculture, night work is defined as work between 10 p.m. and 5 a.m., unless national laws, regulations or collective agreements provide otherwise for specific cases. The same provision specifies that in case of shift work, working schedules should be so arranged so that no employee is engaged in night work for more than seven consecutive days.

[356] Decree No. 101 of 3 March 1982 establishing regulations on protection and hygiene at work, art. 129.

Estonia,[357] *Ethiopia*,[358] *Greece*,[359] *Hungary*,[360] *Lithuania*,[361] *Peru*,[362] *Romania*,[363] *Russian Federation*,[364] *Spain*,[365] *Thailand*[366] and *Ukraine*,[367] night is construed to include the eight-hour period between 10 p.m. and 6 a.m. In *Poland*,[368] night is also understood as stretching over eight hours between 9 p.m. and 7 a.m. In *Mozambique*,[369] night work is considered to be the work performed between 8 p.m. and the time of the start of normal working hours on the following day, while collective agreements may define night work as being work performed during seven of the nine hours between 8 p.m. and 5 a.m. Night work covers a nine-hour period between 8 p.m. and 5 a.m. in *Yemen*,[370] and between 10 p.m. and 7 a.m. in *Chile*.[371] Longer periods are provided for in the labour legislation of *Argentina*[372] and *Mexico*,[373] where night work is considered to be the work carried out between 8 p.m. and 6 a.m., in *Namibia*[374] and *Portugal*,[375] where night applies to the 11-hour period between

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[357] The Working and Rest Time Act of 15 December 1993, s. 19(1).

[358] Labour Proclamation No. 42/1993, arts. 87(3), 91(1).

[359] Presidential Decree No. 88 of 7 May 1999 concerning regulation of working hours in conformity with European Council Directive 93/104, art. 2.

[360] Act No. 22 of 3 March 1992 on the Labour Code, art. 121(2).

[361] Law on Labour Protection No. I-266 of 7 October 1993, art. 45.

[362] Synthesis of labour legislation, as approved by Ministerial Resolution 058-97-TR of 7 July 1997, art. 16.

[363] Labour Code, Law No. 10 of 23 November 1972, art. 115. This period may be shortened or prolonged by no more than one hour in specific cases.

[364] Labour Code of 9 December 1971 as amended up to 30 April 1999, art. 48.

[365] Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 36(1). In order to be considered as a night worker, a worker must perform not less that three hours of the workday, or alternatively, not less than one-third of the annual working hours during the period of night.

[366] Labour Protection Act (B.E.2541) of 12 February 1998, arts. 39, 47.

[367] Labour Code of 11 April 1994, art. 54.

[368] Act of 26 June 1974 promulgating the Labour Code, art. 137.

[369] Act 8/98 of 20 July 1998, art. 34.

[370] Labour Code, Act No. 5 of 1995, as amended by Act No. 25 of 1997, art. 73(1). No worker may be assigned to night work for more than one month.

[371] Labour Directorate, Circular No. 1671/64 of 18 March 1996.

[372] Labour Contract Law, No. 20.744 of 13 May 1976, art. 190.

[373] Federal Labour Act, as amended up to 1 October 1995, art. 60.

[374] Labour Act of 13 March 1992, s. 1.

[375] Decree No. 409 of 27 September 1971, as amended by Decree No. 96/99 of 23 March 1999, art. 29. Collective agreements may provide for different limits of the 11-hour period which has to comprise nonetheless at least seven consecutive hours between 10 p.m. and 7 a.m.

8 p.m. and 7 a.m., and in *Ecuador*[176] and *El Salvador*,[177] where night also covers an 11-hour period between 7 p.m. and 6 a.m. In *Sri Lanka*,[178] the term "night" with reference to employment of women covers at least 11 consecutive hours including the period between 10 p.m. and 5 a.m. In *Israel*,[179] night is defined as a period of 11 hours including the hours from midnight to 6 a.m., and in agriculture from midnight to 5 a.m. In *Botswana*,[180] the term "night" means a period of not less than 12 consecutive hours including the period between 10 p.m. and 6 a.m. Finally, in *Colombia*,[181] *Guatemala*[182] and *Panama*,[183] night work is defined as work performed between 6 p.m. and 6 a.m.

120. Finally, in some countries, the term "night" is not specifically defined. This is the case in *China* and *Australia* where there is no general definition of night and parties may define the term as required when negotiating awards and agreements.

VI. The industrial undertakings subject to the prohibition of night work

121. Among the States parties to one or more of the night work Conventions examined here, some prohibit or restrict the night work of women only in industrial undertakings as defined in Article 1 of Conventions Nos. 4, 41 and 89. This is the case in *Angola*, *Belize*,[184] *Central African Republic*, *Congo*, *Cyprus*, *Gabon*, *India*, *Mali*, *Mauritania*, *Romania*, *Rwanda*, *Senegal*,[185] *Slovenia*, *Swaziland* and *Venezuela*. In *Ghana*[186] and *Kenya*, the definition of "industrial undertakings" reflects the definition in Convention No. 89, but also includes undertakings engaged in the transport of passengers or goods, in the handling of goods at docks, quays, wharves and warehouses at the exclusion of transport by hand. In *Pakistan*,[187] as explicitly provided under Article 11 of

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[176] Labour Code of 29 September 1997, art. 49.

[177] Labour Code of 15 June 1972, as amended by Decree No. 859 of 21 April 1994, art. 161.

[178] Employment of Women, Young Persons and Children Act No. 43 of 1964, s. 34.

[179] Employment of Women Law 5714-1954, s. 2(b).

[180] Employment Act of 1982, s. 109(2).

[181] Labour Code, as modified by Law No. 141 of 1961, art. 160(2).

[182] Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995, art. 116.

[183] Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995, art. 30(2).

[184] Labour Act, Ch. 234, s. 161(1a).

[185] Order No. 5254/IGTLS/AOF of 19 July 1954 regarding conditions of work of women and pregnant women, art. 3, and Order No. 3724/IT of 22 June 1954 regarding child labour, art. 3.

[186] Labour Decree, 1967, s. 47.

[187] Factories Act, 1934, s. 2(j), and Mines Act, 1923, s. 3(f).

Convention No. 89, the term "industrial undertaking" includes only those factories covered by the Factories Act and those mines to which the Mines Act applies. The term "factory" is understood as "any premises, including the precincts thereof, whereon ten or more workers working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power", whereas "mine" means "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine".

122. Among the States not bound by any of the three instruments, *Antigua and Barbuda, Barbados, Croatia, Dominica,*[188] *Mauritius* and *Papua New Guinea* limit the scope of application of any prohibition or restriction on women's night work only to industrial enterprises. In *Sri Lanka,*[189] in addition to the definition with respect to women, the term "industrial undertaking" with respect to night work of persons under 18 years of age also includes undertakings engaged in the transport of passengers or goods by road or rail, or in the handling of goods at docks, quays, wharves, warehouses or airports.

123. In contrast, several countries among those having accepted one or more of the Conventions under review appear to prohibit night work of women in all branches of economic activity rather than merely in industry. This is the case, for instance, in *Austria, Bahrain, Bolivia, Costa Rica, Djibouti, Egypt, Estonia,*[190] *Guinea, Guinea-Bissau, Iraq, Italy, Kuwait, Philippines,*[191] *Saudi Arabia, Tunisia*[192] and the *United Arab Emirates*. With respect to States non-parties to any of the three Conventions, the prohibition or restrictions on women's night work cover all sectors of the economy in *Belarus, Bulgaria, China, Indonesia, Oman* and *Turkey*. In *Thailand* the prohibition applies to all sectors of economic activity except agriculture and home work which are not covered by the Labour Protection Act.

124. Finally, in some countries the prohibition of night work for women refers to industrial and agricultural undertakings. This is the case, for instance, in *Malaysia,*[193] where "agricultural undertaking" is defined as any work in which any employee is employed under a contract of service for the purposes of agriculture, horticulture or silviculture, the tending of domestic animals and poultry or the collection of the produce of any plants or trees. As regards the definition of "industrial undertaking", this essentially reflects the provisions of Convention No. 89 but also includes transport of passengers or goods by road, rail, water or air, including the handling of goods at docks, quays, wharves, warehouses or airports, and any industry, establishment or undertaking, or any activity, service or work, declared to be an industrial undertaking by the Minister.

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[188] Employment of Women, Young Persons and Children Act, 1991, art. 2.

[189] Employment of Women, Young Persons and Children Act, No. 47 of 1956, s. 34(1).

[190] The Working and Rest Time Act of 15 December 1993, s. 2.

[191] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 130.

[192] Labour Code, Act No. 66-27 of 30 April 1966, as last amended by Act No. 96-62 of 15 July 1996, art. 1.

[193] Employment Act No. 265 of 1955, as amended to 1981, s. 2(1), (5).

VII. Non-applicability of the prohibition

1. Family undertakings

125. In several of the States parties to one or more of the instruments under consideration the general ban on night work of women does not apply, in accordance with common Article 3 of Conventions Nos. 4, 41 and 89, to those industrial undertakings in which only members of the same family are employed. This is the case in *Austria*,[394] *Belize*,[395] *Chad*,[396] *Cyprus*,[397] *Egypt*,[398] *Iraq*,[399] *Kenya*,[400] *Lebanon*,[401] *Philippines*,[402] *Swaziland*,[403] *Syrian Arab Republic*[404] and *Venezuela*.[405] Among the States which are not bound by any of the three instruments examined here, *Barbados*,[406] *Croatia*,[407] *Dominica*,[408]

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[394] The exception refers only to family farms; see Agricultural Worker Act of 1984, as amended to 1998, s. 3.

[395] Labour Act, Ch. 234, s. 162(1c).

[396] Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, art. 205(c).

[397] Employment of Women (During the Night) Law of 26 February 1932, s. 3.

[398] Labour Code promulgated by Act No. 137 of 1981, art. 3(c).

[399] Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 89.

[400] Employment Act No. 2 of 15 April 1976, s. 24(1).

[401] Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, art. 7.

[402] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(f).

[403] Employment Act No. 5 of 26 September 1980, s. 101(4d).

[404] Law No. 91 of 5 April 1959 establishing the Labour Code, art. 140.

[405] Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 212(c).

[406] Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 6(c).

[407] Labour Act of 17 May 1995 (Text No. 758), art. 52(2).

[408] Employment of Women, Young Persons and Children Act, 1991, art. 10(1).

Mexico,[409] *Papua New Guinea,*[410] *Ukraine,*[411] and *United Kingdom (Falkland Islands,*[412] *Gibraltar,*[413] *Guernsey*[414]), specifically provide in their legislation that family undertakings are exempted from the prohibition on women's night work. In *Sri Lanka,*[415] where women are in principle permitted to work throughout the night subject to certain conditions, night workers in family undertakings are exempted from those restrictions.

2. *Force majeure*

126. In *Austria,*[416] *Cyprus,*[417] *Gabon,*[418] *Guinea-Bissau,*[419] *Kenya,*[420] *Mali,*[421] *Slovakia,*[422] *Slovenia,*[423] *Swaziland,*[424] *Tunisia,*[425] *United Arab*

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[409] Federal Labour Act, as amended up to 1 October 1995, arts. 351, 352.

[410] Employment Act No. 54 of 21 August 1978, s. 99(1c).

[411] Labour Code of 11 April 1994, art. 175. See also Law No. 3694-12 of 15 December 1993.

[412] Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

[413] Employment Ordinance. See also Employment of Women, Young Persons and Children (Amendment) Ordinance, 1978.

[414] Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

[415] Employment of Women, Young Persons and Children (Amendment) Act, No. 32 of 1984, s. 2B(c).

[416] Federal Act of 25 June 1969 regarding women's night work, s. 5(1a). Similar provisions exist with regard to the employment of children and young persons. Where certain short-term activities become urgently necessary and no adult employees are available, the provisions on night rest cease to apply to young workers over the age of 16; see Federal Act of 1 July 1948 respecting the employment of children and young persons, as last amended by Act of 6 November 1997 (Text No. 126), s. 20. Likewise, in agricultural works, night rest periods may be reduced if this is necessary owing to extraordinary circumstances such as imminent storms or other natural phenomena likely to endanger livestock, damage produce or jeopardize forests: see Agricultural Worker Act of 1984, as amended to 1998, s. 62(3).

[417] Employment of Women (During the Night) Law of 26 February 1932, s. 3(a).

[418] Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 168(a).

[419] General Labour Act No. 2/86 of 5 April 1986, art. 160(2c).

[420] Employment Act No. 2 of 15 April 1976, s. 28(1)(i).

[421] Decree No. 96-178/P-RM of 13 June 1996 to make regulations under the Labour Code, art. D.189-17. The exception refers only to male workers above 16 years of age.

[422] Act No. 451/1992 providing for the Labour Code, s. 152(1a).

[423] Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45.

[424] Employment Act No. 5 of 26 September 1980, s. 101(4a).

[425] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68(a).

Emirates[426] and *Venezuela,*[427] the prohibition of night work does not apply in any case of *force majeure*, or, in the terms of common Article 4(a) of Conventions Nos. 4, 41 and 89, when in an industrial undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character. The same also applies in *Angola,*[428] *Belize*[429] and *Ghana,*[430] on condition that written permission from the competent authority is first obtained. In *Mauritania*[431] and the *Philippines*,[432] the prohibition does not apply in cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disasters or calamity. It does not apply either whenever it is necessary to prevent loss of life or property, or in cases of *force majeure* or imminent danger to public safety. Finally, in *Saudi Arabia,*[433] national legislation provides that by decision of the Minister of Labour exceptions may be introduced to the prohibition of night work in respect of non-industrial occupations and in cases of *force majeure*. To date, however, no ministerial decision has been issued specifying the scope and conditions of application of such exceptions.

127. In some countries, workers may be required to work overtime, and thus possibly during night hours, in case of *force majeure*. This is the case, for instance, in *Costa Rica,*[434] where workers may not be required to work more than 12 hours a day except in the case of a natural disaster or imminent risk to humans, installations, machinery, plantations or crops. Similarly, in *Nicaragua*[435] and *Paraguay*,[436] workers may not be forced to work extra hours except in case of *force majeure* in order to prevent or eliminate the consequences of natural disasters or accidents.

128. Among the States not bound by any of the Conventions on night work of women, *Barbados,*[437] *Dominica*[438] and the *United Kingdom (Falkland*

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[426] Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 28.

[427] Decree No. 1,563 of 31 December 1973 on Labour Act Regulations, art. 212(d).

[428] General Labour Act No. 2/2000 of 11 February 2000, art. 271(2a).

[429] Labour Act, Ch. 234, s. 162(1d).

[430] Labour Decree, 1967, s. 41(1a).

[431] Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, ss. 11, 12. Subject to a limit of 15 nights a year, these exceptions may be availed of if ordinary notice is given to the labour inspector before the commencement of such exceptional work.

[432] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(a).

[433] Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 161.

[434] Labour Code of 1943, as amended up to 1996, art. 140.

[435] Labour Code, Act No. 185 of 30 October 1996, art. 59.

[436] Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1998, promulgating the Labour Code, art. 203.

[437] Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 5.

[438] Employment of Women, Young Persons and Children Act, 1991, art. 10(2b).

Islands,[439] *Gibraltar*,[440] *Guernsey*[441]) provide for an exception to the general ban on night work in case of *force majeure* that could not be foreseen and is not of a recurring nature.

3. Perishable material

129. In *Austria*,[442] *Belize*,[443] *Cyprus*,[444] *Dominica*,[445] *Gabon*,[446] *Iraq*,[447] *Kenya*,[448] *Philippines*,[449] *Slovakia*,[450] *Slovenia*,[451] *Swaziland*,[452] *Syrian Arab Republic*,[453] *Tunisia*,[454] the *United Kingdom (Falkland Islands*,[455] *Gibraltar*,[456] *Guernsey*[457]) and *Venezuela*,[458] labour legislation reflects the wording of common Article 4(b) of Conventions Nos. 4, 41 and 89 allowing for night employment of women where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, and if such night work is necessary to preserve the said materials from certain loss. Likewise, in

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[439] Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

[440] Employment Ordinance. See also Employment of Women, Young Persons and Children (Amendment) Ordinance, 1978.

[441] Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

[442] Federal Act of 25 June 1969 regarding women's night work, s. 5(1b).

[443] Labour Act, Ch. 234, s. 162(1e).

[444] Employment of Women (During the Night) Law of 26 February 1932, s. 3(b).

[445] Employment of Women, Young Persons and Children Act, 1991, art. 10(2e).

[446] Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 168(b).

[447] Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(1).

[448] Employment Act No. 2 of 15 April 1976, s. 28(1)(ii).

[449] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(c).

[450] Act No. 451/1992 providing for the Labour Code, s. 152(1b).

[451] Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45.

[452] Employment Act No. 5 of 26 September 1980, s. 101(4b).

[453] Order No. 1663 of 28 December 1985 regarding employment of women in production, art. 5.

[454] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68(b).

[455] Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

[456] Employment Ordinance. See also Employment of Women, Young Persons and Children (Amendment) Ordinance, 1978.

[457] Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

[458] Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 212(b).

Bangladesh,[459] *India*[460] and *Pakistan*,[461] the Government may adopt rules providing for exemptions from the prohibition of women working in fish-curing or fish-canning factories where the employment of women during the prohibited hours is necessary to prevent damage to or deterioration of any raw materials.

130. In a few countries, the prior notification or authorization from the competent authorities is required before the exception on perishable materials can be invoked. In *Bahrain*,[462] *Central African Republic*,[463] *Congo*,[464] *Croatia*,[465] *Egypt*,[466] *Libyan Arab Jamahiriya*,[467] *Togo*[468] and the *United Arab Emirates*,[469] women's night work is permitted where it is intended to avoid an imminent loss of fragile materials, or to prevent a serious accident, or to repair the consequences of such an accident, on condition that the competent authorities are promptly notified of the emergency situation and of the time necessary to complete the work. This is also the case in *Burkina Faso*,[470] *Mali*,[471] *Mauritania*,[472] *Niger*[473] and *Senegal*,[474] where, subject to a limit of 15 nights a year, a mere notification to the labour inspector would be needed before the commencement of the exceptional work. In *Angola*[475] and *Ghana*,[476] a written permission from the General Labour Inspectorate or the chief labour officer must first be obtained.

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[459] Factories Act, 1965, art. 65(2).

[460] Factories Act No. 63 of 23 September 1948, as amended, s. 66(2).

[461] Factories Act, 1934, as amended to 1987, s. 45(2).

[462] Ministerial Decision No. 18/1976, art. 1(4).

[463] Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, arts. 5, 6.

[464] Act No. 45-75 of 15 March 1975 establishing the Labour Code, art. 110.

[465] Labour Act of 17 May 1995 (Text No. 758), art. 52(5)-(7). However, the labour inspector who must be informed about the situation within 24 hours may still prohibit such night work if he considers that the conditions of *force majeure* are not met or that there is no real and imminent danger to raw materials.

[466] Ministerial Decree No. 23 of 7 February 1982, art. 1(12).

[467] Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m., art. 1(5).

[468] Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children, art. 9.

[469] Ministerial Order No. 46/1 of 1980.

[470] Decree No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 4.

[471] Decree No. 96-178/P-RM of 13 June 1996 to make regulations under the Labour Code, art. D.189-3.

[472] Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, ss. 10, 12, and Order No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 4.

[473] Decree No. 67-126/MFP/T of 7 September 1967 on labour regulations, arts. 108, 109.

[474] Order No. 5254/IGTLS/AOF of 19 July 1954 regarding conditions of work of women and pregnant women, art. 4.

131. In a few countries, the exception is not limited to perishable materials as such, or is couched in terms susceptible to broad interpretation. In *Jordan*,[477] for instance, whether it is to prevent the loss of perishable goods, to avoid the risks inherent in a technical activity, to take delivery or to carry specific substances, night work falls outside the scope of the general prohibition against women's employment during the night. In *Lithuania*,[478] employers are entitled to organize obligatory overtime work and work on days off for employees (except for pregnant women and those who have children under 3 years of age, those who themselves are under 18 years of age, and those who are not allowed to work at night on medical grounds) when it is necessary to complete work which is already in progress and which, for unplanned or accidental obstacles connected with technical production conditions, was not possible to complete during normal work-hours and if materials or equipment would be ruined if the said work was to be interrupted.

4. Women holding responsible positions of managerial or technical character

132. Night work regulations in many countries include specific provisions giving effect to Article 8 of Convention No. 41, or Article 8(a) of Convention No. 89, according to which women holding responsible positions of managerial or technical character who are not ordinarily engaged in manual work are exempted from any prohibition or restriction on night work. This is the case in *Angola*,[479] *Austria*,[480] *Bahrain*,[481] *Belize*,[482] *Cameroon*,[483] *Central African*

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[475] General Labour Act No. 2/2000 of 11 February 2000, art. 271(2b).

[476] Labour Decree, 1967, s. 41(1b).

[477] Ministerial Order No. 4201 of 30 April 1997, art. 4.

[478] Law on Labour Protection, No. I-266 of 7 October 1993, art. 48.

[479] General Labour Act No. 2/2000 of 11 February 2000, art. 271(4a).

[480] Federal Act of 25 June 1969 regarding women's night work, s. 2(1f).

[481] Ministerial Decision No. 18/1976, art. 1(3).

[482] Labour Act, Ch. 234, s. 162(1a).

[483] Labour Code, Law No. 92/007 of 14 August 1992, s. 82(3a).

Republic,[484] *Chad,*[485] *Cyprus,*[486] *Democratic Republic of the Congo,*[487] *Dominica,*[488] *Egypt,*[489] *Gabon,*[490] *Guinea,*[491] *Guinea-Bissau,*[492] *Kenya,*[493] *Libyan Arab Jamahiriya,*[494] *Pakistan,*[495] *Philippines,*[496] *Slovakia,*[497] *Slovenia,*[498] *Swaziland,*[499] *Tunisia,*[500] *United Arab Emirates*[501] and *Venezuela.*[502] Similar provisions are also to be found in the legislation of *Barbados,*[503] *Croatia,*[504] *Oman*[505] and *Papua New Guinea*[506] even though these countries are not parties to either of the two instruments. In the labour laws of some countries reference is also made to "senior positions", "posts of special authority", or "positions requiring a high degree of confidence". Finally, in *Sri Lanka,*[507] where women are in principle permitted to work throughout the night subject to certain conditions, women managers are exempted from those restrictions.

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[484] Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, art. 17(a).

[485] Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, art. 205(a).

[486] Employment of Women (During the Night) Law of 26 February 1932, s. 5.

[487] Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, s. 17.

[488] Employment of Women, Young Persons and Children Act, 1991, art 10(2a).

[489] Ministerial Decree No. 23 of 7 February 1982, art. 1(9).

[490] Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 168(d).

[491] Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women, art. 1.

[492] General Labour Act No. 2/86 of 5 April 1986, art. 160(2a).

[493] Employment Act No. 2 of 15 April 1976, s. 28(1)(iii).

[494] Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m., art. 1(4).

[495] Mines Act, 1923, s. 23-C(3a).

[496] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(d).

[497] Act No. 451/1992 providing for the Labour Code, s. 152(1c).

[498] Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45.

[499] Employment Act No. 5 of 26 September 1980, s. 101(4c).

[500] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68(c).

[501] Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 28.

[502] Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 212(e).

[503] Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 6(a).

[504] Labour Act of 17 May 1995, art. 52(3).

[505] Ministerial Decision No. 19/74.

[506] Employment Act No. 54 of 21 August 1978, s. 99(1a).

[507] Employment of Women, Young Persons and Children (Amendment) Act No. 32 of 1984, s. 2B(a).

5. Women employed in health and welfare services

133. Another category of workers exempted from the prohibition of night work for women relates to women employed in health and welfare services who are not ordinarily engaged in manual work as set out in Article 8(b) of Convention No. 89. The legislation of several States parties to that Convention such as *Angola*,[508] *Austria*,[509] *Bahrain*,[510] *Bangladesh*,[511] *Belize*,[512] *Bolivia*,[513] *Central African Republic*,[514] *Democratic Republic of the Congo*,[515] *Congo*,[516] *Costa Rica*,[517] *Egypt*,[518] *Guinea*,[519] *Guinea-Bissau*,[520] *Iraq*,[521] *Kuwait*,[522] *Libyan Arab Jamahiriya*,[523] *Madagascar*,[524]

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[508] General Labour Act No. 2/2000 of 11 February 2000, art. 271(4b).

[509] Federal Act of 25 June 1969 regarding women's night work, s. 2(1b), (1c), (1d), (1e).

[510] Legislative Decree No. 23 of 16 June 1976 promulgating the labour law for the private sector, as amended by Legislative Decree No. 14 of 1993, art. 59, and Ministerial Decision No. 18/1976, art. 1(7).

[511] Tea Plantation Labour Ordinance, 1962, art. 22. The prohibition on night work does not apply to midwives and nurses employed as such in any tea plantation.

[512] Labour Act, Ch. 234, s. 162(1b).

[513] Supreme Decree of 26 May 1939 to issue the Labour Code, art. 60.

[514] Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, art. 17(b).

[515] Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, s. 17.

[516] Act No. 45-75 of 15 March 1975 establishing the Labour Code, art. 111.

[517] Labour Code of 1943, as amended up to 1996, art. 88(b). Nurses, social workers, domestic employees and other persons engaged in similar activities, are exceptionally permitted to work during the night for as long as their physical, mental and moral health allows it.

[518] Ministerial Decree No. 23 of 1982, art. 1(3).

[519] Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women, art. 1.

[520] General Labour Act No. 2/86 of 5 April 1986, art. 160(2b).

[521] Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(3b).

[522] Act No. 38 of 1964 regarding employment in the private sector, art. 23.

[523] Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m., art. 1(6).

[524] Act No. 94-029 of 25 August 1995 establishing the Labour Code, art. 93.

Mauritania,[525] *Pakistan*,[526] *Philippines*,[527] *Slovakia*,[528] *Slovenia*,[529] *Syrian Arab Republic*,[530] *Tunisia*[531] and the *United Arab Emirates*,[532] reflects this provision allowing women to work on night shifts in hospitals and other medical care institutions. Similar provisions are also to be found in the legislation of some countries not bound by Convention No. 89 such as *Barbados*,[533] *Croatia*,[534] *Indonesia*,[535] *Oman*,[536] *Papua New Guinea*[537] and *Venezuela*.[538] In the case of *Sri Lanka*,[539] where night work of women is subject to only limited restrictions, women employed in health and welfare services are specifically exempted from those restrictions.

6. Other reasons

134. Many countries exclude certain occupations or types of establishments from the general prohibition of night work for women. Most of these exceptions relate to work in non-industrial undertakings, mainly in commerce and transport. For example, in *Bahrain*,[140] *Egypt*,[141] *Kuwait*,[142] *Libyan Arab Jamahiriya*,[143] *Morocco*,[144] *Syrian Arab Republic*[145] and the *United Arab Emirates*,[146] among the States parties to the Conventions reviewed here, but also in *Jordan*[147] and *Oman*,[148] among those not bound by such instruments, the prohibition on night work does not apply to women workers employed in: (i) commercial establishments such as hotels, restaurants, pharmacies, news media, coffee shops, buffet shops, theatres, cinemas, concert halls and other recreational places; (ii) jobs related to transportation of persons and goods by sea or by air, including tourist and air travel offices and airports; (iii) seasonal work or work during certain holidays; (iv) jobs involving the making of annual inventories, accounting duties, or extended working hours on the occasion of seasonal sales; and (v) specific factories of canned fruits, fish and vegetables. In *Iraq*,[149] women workers engaged in administrative work or employed in transport and communication services are exempt from the prohibition on night work. In *Barbados*,[550] the general ban on night work does not apply to persons employed in the sugar industry. In the *Republic of Korea*,[551] workplaces with less than four employees are not subject to the provision concerning the prohibition of women's night work. Nor does the night work prohibition apply to female workers employed in: (i) agricultural or forestry work; (ii) livestock breeding or fishing; and (iii) surveillance or intermittent work. In *Slovakia*,[552] women above 18 years of age may be required to perform night work when employed in veterinary, social, business, or cultural facilities, public catering, communications, customs, railways and public transport, or in livestock production. The Government of *Saudi Arabia*[553] has reported that the prohibition on the night employment of women may be waived for women workers employed in charitable or official institutions providing vocational or professional training, subject to prior approval by the Ministry of Labour and the Ministry of Health, and on condition that the work involved is suitable for the women's physical abilities.

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[525] Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, s. 13. Permanent exceptions to the prohibition may be granted by the labour inspector after consultation with the staff representatives in the case of women employed in health and welfare services.

[526] Mines Act, 1923, s. 23-C(3b).

[527] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(d).

[528] Act No. 451/1992 providing for the Labour Code, s. 152(1c).

[529] Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45.

[530] Order No. 1663 of 28 December 1985 regarding employment of women in production, art. 5.

[531] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68(d).

[532] Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 28.

[533] Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 6(b).

[534] Labour Act of 17 May 1995 (Text No. 758), art. 52(3).

[535] Law on Manpower Affairs, No. 25 of 3 October 1997, art. 98(2c).

[536] Ministerial Decision No. 19/74.

[537] Employment Act No. 54 of 21 August 1978, s. 99(1b).

[538] Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 211. This exception is only applicable to women over 18 years of age and on condition that they are given an uninterrupted rest period of at least nine hours.

[539] Employment of Women, Young Persons and Children (Amendment) Act No. 32 of 1984, s. 2B(b).

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[140] Ministerial Decision No. 18/1976, and Legislative Decree No. 23 of 16 June 1976 promulgating the labour law for the private sector, as amended by Legislative Decree No. 14 of 1993, art. 79.

[141] Ministerial Decree No. 23 of 7 February 1982, arts. 1, 3. Under art. 2 of the same Ministerial Decree, work by women is authorized between 8 p.m. and 10 p.m. in spinning and weaving companies and factories as well as in accountancy and law firms in the event that male workers are not available. Replying to an earlier comment made by the Committee, the Government has stated that this provision is not currently applied as it was issued under circumstances which are no longer present. Furthermore, the Government has informed that art. 1(5) which allowed for night employment of women in joint ventures established in accordance with the provisions of Act No. 43 of 1974 on Arab and foreign capital investment and free zones, as amended by Act No. 32 of 1977, was repealed by virtue of Act No. 230 of 20 July 1989 promulgating the Investment Law.

[142] Ministerial Order No. 5 of 1985. Under art. 2 of Act No. 38 of 1964 regarding employment in the private sector, certain categories of workers, such as workers in enterprises operating without recourse to power and employing less than five persons, and casual and temporary workers engaged for periods less than six months, are excluded from its scope of application. Following recurrent comments by the Committee as to the need to amend the above law to give effect to the provisions of the Convention, the Government has been considering for some years the adoption of a new Labour Code for the private sector covering the categories of workers currently excluded.

[143] Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m., art. 1(1), (2), (3).

[144] Ministerial Decree of 8 March 1948, arts. 1, 2. Some of the exceptions are permanent while others are provisional in the sense that women working in certain establishments may not be totalling more than 60 to 90 days of night work every year.

[145] Order No. 1663 of 28 December 1985 regarding employment of women in production, art. 5.

[146] Ministerial Orders Nos. 46/1 and 47/1 of 1980.

[147] Ministerial Order No. 4201 of 30 April 1997, art. 4.

[148] Ministerial Decision No. 19/74.

[149] Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(3)(a), (3)(c).

135. In a few cases, legislated exceptions are so far-reaching that they practically nullify the very principle of preventing women from working during the night. Among the States parties to the Conventions under review, *Costa Rica*[554] has recently enacted legislation according to which women employed in industry are exempted from the prohibition of night work for reasons of national interest, on condition that employers meet the following requirements: (i) the working schedule involves more than one shift; (ii) the social security legislation is respected; (iii) the working conditions are not unhealthy or dangerous and all appropriate hygiene and security measures are taken; and (iv) women are provided with adequate transportation means. In *Belize*,[555] if, having regard to the nature of the work involved in any occupation which forms part of an industrial undertaking, the Minister considers that such occupation should be excluded from all or any of the provisions of the part of the Labour Act in which the prohibition of night work is also contained, he may, by order, declare that employment in such occupation shall be deemed not to be employment in an industrial undertaking to the extent specified in such order. Similarly, in *Guinea-Bissau*,[556] the prohibition of night work for women does not apply to any work which because of its nature has to be carried out during the night. In *Lithuania*,[557] as a temporary measure, women's night work is allowed in those branches of the economy, where such work is indispensable as, for example, in trade, textiles and light industry, food industry and other spheres of production and services sector. In *Bolivia*,[558] the prohibition of night work for women does not apply to some unspecified "forms of work to be determined". As regards countries maintaining a prohibition on women's night work and yet not bound by any of the Conventions here examined, the Government of *Indonesia*,[559] has reported that certain undertakings may be authorized to employ women workers at night when the nature of the job or the type of enterprise requires continuous operation, as well as when there is a need to achieve the production target or to improve the quality of production.

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[550] Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 6(d).

[551] Labour Standards Act No. 5309 of 13 March 1997, art. 61. In this connection, the *Korean Confederation of Trade Unions (KCTU)* has commented that, according to 1998 figures released by the Ministry, 28.4 per cent or 865,850 female workers out of 3,046,617 are employees at workplaces with four or less employees and may thus work at night without any limitations.

[552] Act No. 451/1992 providing for the Labour Code, s. 152(1c).

[553] Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 170.

[554] Decree No. 26898-MTSS of 30 March 1998, arts. 1, 2. See also Labour Code of 1943, as amended up to 1996, art. 88.

[555] Labour Act, Ch. 234, s. 160(2).

[556] General Labour Act No. 2/86 of 5 April 1986, art. 160(2d).

136. Finally, it should be mentioned that according to information provided by the Government of *China*, national legislation does not provide for any exceptions to the prohibition of night work for women, but that in reality exceptions occur mainly on a voluntary basis.

VIII. Suspension of the prohibition

1. Serious emergency – National interest

137. A few countries have incorporated the provision of Article 5(1) of Convention No. 89 into their national legislation providing for the possibility of a temporary suspension of the prohibition of night work for women when in case of serious emergency the national interest demands it and after consultation with the employers' and workers' organizations concerned. This is the case in

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[557] Labour Code of 1 June 1972, art. 161, and Act No. I-266 of 7 October 1993 on labour protection (occupational safety), as amended to 3 November 1994, art. 48.

[558] Supreme Decree of 26 May 1939 to issue the Labour Code, art. 60, and Decree of 23 August 1943 regulating the General Labour Act, art. 53. In response to the Committee's repeated requests for clarifications on the exact meaning of that proviso, the Government has stated that the exemption in question relates to women employed in certain branches of activity such as the health sector, telecommunications and media, and civil or commercial aviation.

[559] Ministerial Regulation No. 04/MEN/1989 on procedures to employ women workers at night, arts. 2, 3, and Law on Manpower Affairs No. 25 of 3 October 1997, art. 98(3). When employing women at night, however, the employer has to keep certain safety, health and ethical standards and ensure that: (i) women workers are not pregnant; (ii) women workers are at least 18 years of age or married; (iii) transportation is provided; (iv) nutritious food and drink are provided; (v) the approval of a woman's husband/parents/guardian is obtained; (vi) local customs are respected.

Kenya,[560] *Pakistan*[561] and *Tunisia,*[562] while in *Belize,*[563] the suspension may only refer to male persons between 16 and 18 years of age. In *Slovakia,*[564] the temporary employment of women above 18 years of age may be authorized if urgent interests of society so require, and if work of a less strenuous nature is involved, with the prior consent of the trade unions and employers' organizations concerned. In *Lithuania,*[565] the Government may restrict the application of the law providing for the prohibitions and restrictions on night work upon declaration of an emergency military situation as well as under other special circumstances which pose a threat to national security. In the *Central African Republic*[566] and *Congo,*[567] the general ban on women's night work may be suspended, after consultation with the workers' and employers' organizations concerned, when for particularly serious economic reasons the national interest so requires. Among the countries non-parties to any of the instruments under review, *Papua New Guinea*[568] provides in its legislation that the Minister of Labour may, where in his opinion there exists a national emergency or it is in the national interest, suspend the prohibition of night work for women by notice published in the *National Gazette*. In *Croatia*[569] and *Dominica,*[570] only the prohibition of night employment for minors may exceptionally be suspended by decision of the Minister of Labour in case of grave danger and for the protection of national interests. Finally, in *Sri Lanka*,[171] where women are in principle permitted to work throughout the night subject to certain conditions, the Minister may vary these conditions, or prohibit employment of women during the night, when in the case of serious emergency the public interest demands it.

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[560] Employment Act No. 2 of 15 April 1976, s. 29.

[561] Mines Act, 1923, s. 46(1). It should be noted that the requirement of prior consultations with the employers' and workers' organizations concerned, as prescribed by art. 5 of Convention No. 89, was introduced by virtue of the Mines (Amendment) Act, 1967, following the Committee's persistent comments in this regard since 1954. In contrast, no consultation appears to be required under the Factories Act of 1934, art. 8 of which provides that, in any case of public emergency, provincial governments may exempt any factory from any or all of the provisions of this Act for such period as they may think fit.

[562] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 71. The Government has reported that it has never made use of the suspension clause.

[563] Labour Act, Ch. 234, s. 162(3).

[564] Act No. 451/1992 providing for the Labour Code, s. 152(2).

[565] Act No. I-266 of 7 October 1993 on Labour Protection (Occupational Safety), as amended to 3 November 1994, arts. 5, 48.

[566] Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, art. 3. The Committee has been pointing out for the last 45 years that the above proviso authorizes departures to be made from the prohibition of night work for women which are not allowed by Convention No. 41, although they are not very different from those authorized by Article 5 of Convention No. 89.

[567] Act No. 45-75 of 15 March 1975 establishing the Labour Code, art. 108.

[568] Employment Act No. 54 of 21 August 1978, s. 99(2).

[569] Labour Act of 17 May 1995 (Text No. 758), art. 54(3), (4).

[570] Employment of Women, Young Persons and Children Act, 1991, art. 13.

2. Other reasons

138. In *Ghana*,[172] the prohibition of women's night employment may be suspended, upon written permission of the Chief Labour Officer, in any industrial undertaking where occurs an interruption of work by reason of strike. In *Kenya*,[173] the Minister of Labour may, after consultation with the Labour Advisory Board, authorize an employer to employ women or young persons up to midnight or from 5 a.m. subject to such conditions as the Minister may determine. In *Madagascar*[174] and *Swaziland*,[175] the employment of female workers in any industrial undertaking during the night may be authorized provided that the competent authority is satisfied that the undertaking in question fulfils certain requirements such as the existence of security measures and adequate means of transport, the availability of rest rooms and dining rooms, and the grant of rest and meal breaks. In *Ukraine*,[176] the Labour Code provides that the prohibition of night work for women applies to all spheres of public production, industrial enterprises and health care establishments with the exception of those sectors of national economy where it is necessitated by a special need and has been authorized as a temporary measure. The list of these branches of activity and types of occupations with the indication of the maximum duration of night work allowed has to be approved by the Cabinet of Ministers. However, no such list has been established so far and the term "special need" remains undefined. Similarly, in *Slovenia*,[177] labour legislation permits night work schedules for women to be introduced in specific establishments if this is called for by special economic, social or similar circumstances and the Minister of Labour, Family and Social Affairs issues an authorization to this effect, while in *Algeria*,[578] similar authorizations may be granted if the nature and special circumstances of the work so require.

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[171] Employment of Women, Young Persons and Children (Amendment) Act No. 32 of 1984, s. 2(c).

[172] Labour Decree, 1967, s. 41(1a). For over 20 years, the Committee has stressed the need to amend this section which is contrary to the provisions of art. 4(a) of the Convention. The Government has reported that the National Advisory Committee on Labour has recommended the deletion of the controversial provision and that the new draft Labour Code currently under preparation is expected to ensure full conformity with the provisions of the Convention.

[173] Employment Act No. 2 of 15 April 1976, s. 28(2).

[174] Act No. 94-029 of 25 August 1995 establishing the Labour Code, art. 92. Authorizations are of limited duration and may be withdrawn at any time. The Government has indicated that such authorizations have been granted in the past to free zone enterprises in order to satisfy general production requirements.

[175] Employment Act No. 5 of 26 September 1980, s. 101(1), (3).

[176] Labour Code of 11 April 1994, art. 175.

[177] Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, art. 79, and Act on Fundamental Rights ensuing from Labour Relations, Text No. 921 of 28 September 1989, art. 45. See also General Collective Agreement for Commercial Activities (*Official Gazette*

IX. Exemptions from the prohibition and variations of the night period

1. Exemptions by agreement

139. In *Tunisia*,[579] labour legislation was amended in 1996 to introduce the possibility for exemptions from the prohibition of night work for women and variations in the duration of the night period reflecting the provisions of Article 1 of the 1990 Protocol to Convention No. 89. Similarly, the Government of *Slovenia* has reported that draft article 126 of the new Labour Relations Act, currently in the process of adoption, is expected to introduce the possibility for exemptions from the prohibition of night work at the branch level or at the level of specific establishments after consulting the most representative employers' and workers' organizations. In *Austria*,[580] the most recent amendments to the federal legislation on women's night work introduced in 1998 provide for exemptions that may be allowed under the terms of collective agreements subject to certain conditions: the agreements in question must apply equally to men and women, and they must provide for measures: (i) to compensate and mitigate the burden of night work; (ii) to allow transfer to day duties if the worker's health so requires; and (iii) to respect as far as possible the worker's care responsibilities for children below 12 years of age. Finally, it is interesting to note that the labour legislation of *Croatia*,[581] which is not bound by Convention No. 89, echoes to the letter the provisions of the 1990 Protocol and stipulates that the Labour Minister may, for important economic or social

No. 40-2205/1997), art. 20. The Government has reported that, in 1988, applications were received from 173 employers for the introduction of night work for women in industrial undertakings, and that the Ministry of Labour, Family and Social Affairs issued 155 authorizations on the basis of which approximately 8,470 women were assigned to night work. Female night working was mainly registered in poor-performing industrial branches experiencing fierce competition such as the textile industry, but also in the food, metal-processing, electrical power and wood-processing industries.

[578] Act No. 90-11 of 21 April 1990 respecting labour relations, art. 29.

[579] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68-2.

[580] Federal Act of 25 June 1969 regarding women's night work, as amended by Federal Act BGBl. I No. 5/1998, s. 4(c).

[581] Labour Act of 17 May 1995 (Text No. 758), art. 53(1).

reasons and upon obtaining the consent of employers' and workers' organizations, define night work differently and introduce exemptions from the prohibition for those female workers employed in certain industrial branches.

2. Undertakings influenced by the seasons

140. In accordance with common Article 6 of Conventions Nos. 4, 41 and 89, some countries provide for the possible reduction of the night period to ten hours on 60 days of the year in industrial undertakings which are influenced by the seasons or where exceptional circumstances demand it. This is the case in *Belize*,[582] *Ghana*[583] and *Venezuela*,[584] but also in *Dominica*,[585] which is not bound by any of the three Conventions. In *Djibouti*,[586] labour laws simply provide that night hours may vary according to the seasons.

3. Shorter night rest due to climatic conditions

141. A few countries have enacted legislation consistent with common Article 7 of Conventions Nos. 4, 41 and 89 which provides for the possibility of shorter night periods where the climate renders work by day particularly trying on condition that compensatory rest is accorded during the day. This is the case, for instance, in *Tunisia*[587] and *Venezuela*.[588] In *Belize*,[589] the Minister may grant permission for women and male persons between 16 and 18 years of age to be employed in any industrial undertaking between 7 p.m. and 11 p.m., provided that the night rest period is not less than 12 consecutive hours.

4. Maternity protection: Working hours and maternity leave entitlement

142. According to Article 2(1) of the Protocol of 1990 to Convention No. 89, the possible variations in the duration of the night period or exemptions from the prohibition of night work which may be introduced pursuant to Article 1 cannot apply to women workers for at least 16 weeks before and after childbirth. This proviso reflects the understanding that even though the prohibition of night work for women could practically be lifted in specific branches of activity or specific establishments, minimum protection should still be provided for pregnant workers and nursing mothers and thus an unconditional prohibition of night work should continue to apply at least during the two months preceding childbirth and the two months following it.[590] In some countries, labour legislation already offers such protection since it provides for compulsory maternity leave of 16 weeks, or more, covering both day and night work. It appears, therefore, necessary to briefly review national laws and policies concerning maternity leave entitlement in so far as they affect women's employment during the night.

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[582] Labour Act, Ch. 234, s. 160(1a).

[583] Labour Decree, 1967, s. 47.

[584] Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 214.

[585] Employment of Women, Young Persons and Children Act, 1991, art. 12.

[586] Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952, art. 113.

[587] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 70.

[588] Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 215.

[589] Labour Act, Ch. 234, s. 162(5).

143. Among the States parties to the Protocol, only *Tunisia*[591] has so far incorporated the clause of Article 2(1) into its legislation to the effect that it is prohibited to apply any variations and exemptions from the prohibition on night work to women workers during a period of 16 weeks before and after childbirth, including at least the eight weeks before the expected date of delivery, except when a specific authorization has been obtained from the chief labour inspector at the express request of the woman worker concerned. In *Croatia*,[592] national legislation provides that an expectant mother, a mother with a child under 2 years of age, or a single mother with a child under 3 years of age cannot be exempted from the prohibition of night work unless she herself requests so.

144. In many countries, labour laws provide that women may not be employed, in day or night work, during an overall period of 12 weeks before and after childbirth. In *Barbados*,[593] *Colombia*,[594] *Dominica*,[595]

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[590] It may be noted, in this respect, that as originally drafted Art. 2 of the Protocol provided for "periods of at least three months before the expected date of childbirth and at least three months after childbirth". The text was finally amended to align with Art. 7 of Convention No. 171 which referred to a period of at least 16 weeks; see ILC, 77th Session, 1990, *Record of Proceedings*, p. 26/24.

[591] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68-3.

[592] Labour Act of 17 May 1995 (Text No. 758), art. 53(2).

[593] Employment of Women (Maternity Leave) Act, 1976, s. 4(1).

[594] Labour Code, as amended through Law No. 50 of 28 December 1990, art. 34.

[595] Labour Standards (Amendment) Act 1991, arts. 17, 18, 22. The maternity leave entitlement is subject to the condition that the female employee has completed 12 months of continuous employment by an employer. While on maternity leave, the female worker has the right to receive a weekly wage that is not less than one-half of her normal weekly wage for a period of four weeks following the date on which her maternity leave commenced.

Dominican Republic,[596] *El Salvador,*[597] *Ghana,*[598] *Haiti,*[599] *India,*[600] *Israel,*[601] *Mauritius,*[602] *Mexico,*[603] *Norway,*[604] *Paraguay,*[605] *Rwanda,*[606] *Swaziland,*[607] *Turkey*[608] and *Uruguay,*[609] women are entitled to a 12-week paid maternity leave, including six weeks before childbirth and six weeks after. In *Seychelles,*[610] a female worker is entitled to a total of eight weeks' paid maternity leave of which not less than six weeks must be taken after confinement, and to four weeks' unpaid maternity leave to be taken before or after paid maternity leave. In *Ecuador*[611] and *Sri Lanka*[612] expectant workers are not allowed to work during the two weeks preceding confinement and the ten weeks following childbirth, while in *Guatemala*[613] and *Nicaragua*,[614] maternity leave starts four weeks before delivery and ends eight weeks after delivery. In *Argentina*,[615] *Ethiopia*,[616] *Peru*,[617] *Thailand*,[618] *Zambia*[619] and *Zimbabwe*,[620] women have the right to take maternity leave of not more than 90 days which in most cases includes a period of 45 days before and 45 days after delivery. Finally, in *Angola*[621] and *Indonesia*,[622] labour laws provide for a fully paid compulsory leave of three months.

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[596] Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 236.

[597] Labour Code of 15 June 1972, as amended up to 1994, art. 309. While absent from work on maternity leave, women have the right to receive 75 per cent of their salary.

[598] Labour Decree, 1967, s. 42(1). However, this period may be extended to at least eight weeks in the case of multiple births or abnormal confinement.

[599] Labour Code, Decree of 24 February 1984, arts. 322, 328.

[600] Maternity Benefit Act No. 53 of 12 December 1961, s. 5(1), (3).

[601] Employment of Women Law 5714-1954, s. 6(b). An adoption leave of the same duration is also provided for those women employees who decide to adopt children not older than 10 years.

[602] Labour Act, 1975, s. 19(1).

[603] Federal Labour Act, as amended up to 1 October 1995, art. 170(II) and Political Constitution of the United Mexican States, art. 123A(V).

[604] Act No. 4 of 4 February 1977 respecting Workers' Protection and the Working Environment, as subsequently amended, last by Act No. 19 of 28 February 1997, s. 31(1). Parents are entitled to further leave of absence during the first year of the child's life provided that the maternity and parental leave do not exceed one year altogether for both parents jointly.

[605] Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, promulgating the Labour Code, art. 133.

[606] Labour Code, Act of 28 February 1967, art. 128.

[607] Employment Act No. 5 of 26 September 1980, s. 103(1).

[608] Labour Act No. 1475 of 25 August 1971, art. 70 and Decree No. 7/6909 of 23 July 1973 to approve Regulations respecting the Conditions of Work for Women Working Night Shifts on Industrial Works, art. 6. In addition, nursing mothers may not be employed on a night shift for a period of six months following their confinement.

[609] Decree No. 15.084 of 28 November 1980.

[610] Conditions of Employment Regulations of 24 April 1991 (S.I. 34), s. 16(1) and Conditions of Employment (Amendment) Regulations of 27 June 1991 (S.I. 45), s. 2(b).

[611] Labour Code of 29 September 1997, arts. 152, 153. Women workers are paid their full salary throughout the compulsory 12-week maternity leave.

[612] Maternity Benefits (Amendment) Act No. 43 of 1985, s. 4(b), and Maternity Benefits Ordinance, s. 10B.

145. A few countries have legislated a maternity leave of a maximum period of 14 weeks. This is the case in *Algeria*,[623] *Benin*,[624] *Burkina Faso*,[625] *Cameroon*,[626] *Central African Republic*,[627] *Chad*,[628] *Comoros*,[629] *Côte d'Ivoire*,[630] *Democratic Republic of the Congo*,[631] *Gabon*,[632] *Guinea*,[633]

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[613] Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995, art. 152. The 12-week, fully paid rest period is dependent on the production of a medical certificate stating that the confinement will probably take place within five weeks reckoned from the date of the issue of the certificate.

[614] Labour Code, Act No. 185 of 30 October 1996, art. 141. The postnatal period of the maternity leave may be extended to ten weeks in the case of multiple births.

[615] Labour Contract Law No. 20.744 of 13 May 1976, art. 177.

[616] Labour Proclamation No. 42/1993, art. 88(3).

[617] Law No. 26644 of 25 June 1996, art. 1 and Law No. 26790 of 1997, art. 16.

[618] Labour Protection Act (B.E.2541) of 12 February 1998, art. 41.

[619] Minimum Wages and Conditions of Employment (General) Order of 23 October 1997 (S.I. No. 119), s. 7(1). The maternity leave entitlement is subject to completion of two years of continuous service from the date of first engagement or since the last maternity leave was taken.

[620] Labour Relations Act (Ch. 28:01), s. 18.

[621] General Labour Act No. 2/2000 of 11 February 2000, art. 273(1), (6).

[622] Manpower Affairs No. 25 of 3 October 1997, arts. 104(3), 106.

[623] Act No. 83-11 of 2 July 1983 on social insurance, arts. 28, 29.

[624] Law No. 98-004 of 27 January 1998 to establish a Labour Code, art. 170.

[625] Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, art. 84.

[626] Labour Code, Law No. 92/007 of 14 August 1992, s. 84(2).

[627] Act No. 61-221 of 2 June 1961 establishing the Labour Code, art. 123.

[628] Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, arts. 107, 108. In any event, an employer is prohibited from employing a woman within six weeks following her confinement.

[629] Labour Code, Law No. 84-018/PR of 18 February 1984, art. 121. Throughout this period, a female employee continues to receive her full salary.

[630] Act No. 95-15 of 12 January 1995 establishing the Labour Code, art. 23.5

[631] Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, s. 112.

[632] Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 171.

[633] Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, s. 59 and Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and

Japan,[634] *Madagascar*,[635] *Mali*,[636] *Mauritania*,[637] *New Zealand*,[638] *Niger*,[639] *Panama*,[640] *Senegal*,[641] *Togo*[642] and the *United Kingdom (Gibraltar*[643]*)*. In most of these countries pregnant workers are entitled to maternity leave which begins six weeks before the expected date of confinement and ends eight weeks after delivery. In *Congo*,[644] the maternity leave covers 15 consecutive weeks of which nine must be taken after delivery. Similarly, in *Belgium*,[645] a female worker is entitled to 15 weeks of maternity leave composed of six weeks' optional leave and one week's compulsory leave before the expected date of childbirth and eight weeks' compulsory leave after childbirth.

146. In some countries, the maternity leave entitlement extends to or exceeds 16 weeks. National laws in *Austria*,[646] *Cyprus*,[647] *Luxembourg*,[648] *Spain*[649] and *Switzerland*,[650] for example, provide for a maternity leave of a total duration of 16 weeks. Similarly, in *Latvia*,[651] women are entitled to 56 calendar

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pregnant women, art. 8. In any event, an employer is prohibited from employing a woman within six weeks following her confinement.

[634] Labour Standards Law No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, art. 65.

[635] Act No. 94-029 of 25 August 1995 establishing the Labour Code, art. 98.

[636] Act No. 92-020 of 23 September 1992 establishing the Labour Code, art. L.179.

[637] Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book I, s. 33; Book II, s. 15, and Order No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 19.

[638] Parental Leave and Employment Protection Act No. 129 of 10 July 1987, ss. 7, 9.

[639] Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code, art. 103.

[640] Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995, art. 107.

[641] Labour Code, Law No. 97-17 of 1 December 1997, art. L.143.

[642] Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 112.

[643] Employment (Maternity and Health and Safety) Regulations 1996, s. 5(1).

[644] Act No. 45-75 of 15 March 1975 establishing the Labour Code, arts. 113, 114.

[645] Labour Act of 16 March 1971, as amended, s. 39.

[646] Maternity Protection Act of 17 April 1979, ss. 6(1), 3(1).

[647] Maternity Protection Law No. 100(I) of 1997, s. 3(2), (3). In addition, a female employee who, with the intention to adopt, undertakes the care of a child less than 5 years of age has the right to a maternity leave of a total duration of 14 weeks.

[648] Act of 3 July 1975 on maternity protection, as amended by Act of 7 July 1998, art. 3(1), (2). The length of the postnatal maternity leave may be extended from eight to 12 weeks in the case of pre-term delivery, multiple births, or breastfeeding.

[649] Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 48(4).

[650] Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, art. 35a(3).

[651] Labour Code, as amended to 25 October 1994, art. 173.

days of pregnancy leave and 56 calendar days of maternity leave, while in the *Republic of Moldova*,[652] the maternity leave covers a period of 70 calendar days before and 56 calendar days after delivery. In *Slovenia*,[653] a female worker exercises the right to maternity leave in the shape of absence from work for 105 days. Women workers are entitled to maternity leave of 120 days in *Brazil*[654] and *Portugal*,[655] and of 140 days in the *Russian Federation*.[656] Likewise, prenatal and postnatal leave may not exceed four months in *Costa Rica*,[657] and four to six months in *Viet Nam*.[658] In *Chile*,[659] *Cuba*[660] and *Venezuela*,[661] women have a right to 18 weeks of maternity leave covering six weeks before confinement and 12 weeks after. In the *Czech Republic*,[662] and *Slovakia*,[663] pregnant workers are entitled to 28 weeks of maternity leave, while in *Hungary*,[664] the maternity leave entitlement extends to 24 weeks. Finally, in the case of *Poland*,[665] the duration of maternity leave varies depending on the family situation of the expectant mother; a female employee is thus entitled to 16 weeks of maternity leave for the first birth, 18 weeks for the second, and 26 weeks in the case of multiple births.

147. In contrast, in other countries, women workers are entitled to maternity leave of a much shorter length ranging from 30 days to ten weeks. In the case of *Bahrain,*[666] *Bolivia,*[667] *Egypt,*[668] *Guinea-Bissau,*[669] *Iraq,*[670] *Kenya,*[671] *Republic of Korea,*[672] *Kuwait,*[673] *Lebanon,*[674] *Libyan Arab Jamahiriya,*[675] *Malaysia,*[676] *Syrian Arab Republic,*[677] *Tunisia,*[678] *United Arab Emirates*[679] and *Yemen,*[680] pregnant employees have the right to pre- and post-confinement leave totalling from 45 to 70 days. In *Bangladesh,*[681] *Pakistan,*[682] *Papua New Guinea*[683] and the *Philippines,*[684] women may not be employed during the six weeks following the day of delivery. In *Singapore,*[685] maternity leave is set at eight weeks, while in *Jordan*[686] and *Saudi Arabia,*[687] it extends to ten weeks including rest before and after delivery.

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[652] Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 173.

[653] Labour Relations Act of 29 March 1990, arts. 80, 83.

[654] Act No. 8.213/91, art. 71.

[655] Act No. 142/99 of 31 August 1999, art. 10. At least 90 days of the maternity leave must be taken after childbirth.

[656] Labour Code of 9 December 1971, as amended to 30 April 1999, arts. 165, 167, 168.

[657] Labour Code of 1943, as amended up to 1996, art. 95. In case of adoption, foster mothers are also entitled to a three-month paid leave.

[658] Labour Code of 23 June 1994, art. 114(1).

[659] Labour Code of 7 January 1994, arts. 195, 198.

[660] Maternity Law No. 1263 of 14 January 1974, art. 2.

[661] Labour Act of 27 November 1990, as modified by Act of 19 June 1997, arts. 385, 387. In addition, a female employee who decides to adopt a child less than 3 years of age has the right to a maternity leave of a maximum period of ten weeks.

[662] Labour Code, Act No. 65/1965, as amended up to 1996, ss. 157(1), 158(1), 160(1).

[663] Act No. 451/1992 providing for the Labour Code, ss. 157(1), 158(1). The maternity leave may extend to 37 weeks in the case of multiple births.

[664] Act No. 22 of 3 March 1992 on the Labour Code, art. 138(1). After the expiry of maternity leave and upon the employee's request, unpaid leave may be allocated for the purpose of raising the child until the child reaches the age of 3 or the age of 10 in the case of a chronically ill or seriously disabled child.

[665] Act of 26 June 1974 promulgating the Labour Code, art. 180. Women adopting a child are equally entitled to 18 weeks of maternity leave.

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[666] Legislative Decree No. 23 of 16 June 1976 promulgating the Labour Law for the Private Sector, as amended by Legislative Decree No. 14 of 1993, art. 61.

[667] Supreme Decree of 26 May 1939 to issue the Labour Code, art. 61.

[668] Labour Code promulgated by Act No. 137 of 6 August 1981, arts. 154, 156.

[669] General Labour Act No. 2/86 of 5 April 1986, art. 158(1), (2). The maternity leave is of a total duration of 60 days, 30 of which must be taken after childbirth.

[670] Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 84(1). A woman worker is entitled to 62 days' maternity leave at full pay.

[671] Employment Act No. 2 of 15 April 1976, s. 7(2). A woman employee is entitled to two months' maternity leave with full pay provided that a woman who has taken two months' maternity leave forfeits her annual leave in that year.

[672] Labour Standards Act No. 5309 of 13 March 1997, art. 72(1).

[673] Act No. 38 of 1964 regarding employment in the private sector, art. 25. According to art. 27 of the Bill to amend Law No. 38 of 1964, the maternity leave period is expected to increase to 45 days as from the date of confinement.

[674] Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, art. 28.

[675] Labour Code, Act No. 58-2970 of 1 May 1970, art. 43. A female employee who has completed six months' continuous service with the same employer is entitled to 50 days' maternity leave on half pay.

[676] Employment Act No. 265 of 1955, as amended to 1981, s. 37(1a).

[677] Labour Code, art. 133.

[678] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 64.

[679] Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 30.

[680] Labour Code, Act No. 5 of 1995, as amended by Act No. 25 of 1997, art. 45.

[681] Maternity Benefit Act, 1939, arts. 3, 4.

[682] West Pakistan Maternity Benefit Ordinance, 1958, ss. 3, 4(1).

[683] Employment Act No. 54 of 21 August 1978, s. 100(1c), (3), (5b). Maternity leave is unpaid leave and may only be granted if the employee has been employed by the employer for not less than 108 days within the period of the last 12 months, or for not less than 90 days within the period of the last six months.

[684] Labour Code, art. 133(a).

[685] Employment Act (Ch. 91), as amended to 30 April 1996, s. 76(1a), (2), (4). During the maternity leave, female employees are entitled to receive payment at their gross rate of pay provided that they have served an employer for not less than 180 days immediately before confinement and that they do not have two or more children.

5. Maternity protection: Employment and income security

148. In conformity with the principles laid down in maternity protection Conventions Nos. 3, 103 and 183, but also in line with the provision of Article 2(3a) of the Protocol of 1990 to Convention No. 89, practically all member States whose legislation has been reviewed for the purposes of the present survey protect pregnant or nursing mothers against arbitrary dismissal for reasons connected with pregnancy or childbirth. The aim is, of course, to ensure that maternity and motherhood do not turn into sources of discrimination in employment. However, the scope of the employment security and income maintenance guarantees offered to expectant and child-rearing workers in different countries presents noticeable variations.

149. Among the States parties to the Protocol, only *Tunisia*[688] has enacted legislation to the effect that the employment contract of a woman worker may not be terminated during a period of eight weeks preceding and eight weeks following childbirth, or any additional period of medically certified leave which may be necessary for the health of the mother or the child. According to the labour laws of several countries, the protection conferred to women workers against maternity-related dismissal applies only during the maternity leave period. This is the case, for instance, in *Albania,*[689] *Bangladesh,*[690] *Bahrain,*[691] *Botswana,*[692] *Burkina Faso,*[693] *Burundi,*[694] *Cameroon,*[695] *Central African*

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[686] Labour Code, Law No. 8 of 1996, arts. 70, 67.

[687] Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 164.

[688] Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68-4.

[689] Labour Code, Act No. 7961 of 12 July 1995, art. 107.

[690] Maternity Benefit Act, 1939, art. 7.

[691] Legislative Decree No. 23 of 16 June 1976 promulgating the Labour Law for the Private Sector, as amended by Legislative Decree No. 14 of 1993, art. 63.

[692] Employment Act No. 29 of 1982, s. 121. During her absence from work in connection with confinement, a female worker is entitled to payment of a maternity allowance of not less than 25 per cent of her usual pay.

[693] Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, art. 84.

[694] Labour Code, Decree No. 1/037 of 7 July 1993, arts. 122, 123. Female employees are entitled to half of their average salary during maternity leave.

[695] Labour Code, Law No. 92/007 of 14 August 1992, s. 84(2).

Republic,[696] *Comoros,*[697] *Congo,*[698] *Cuba,*[699] *Democratic Republic of the Congo,*[700] *Djibouti,*[701] *Ghana,*[702] *Guinea,*[703] *India,*[704] *Japan,*[705] *Republic of Korea,*[706] *Libyan Arab Jamahiriya,*[707] *Malaysia,*[708] *Mali,*[709] *Mauritania,*[710]

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[696] Act No. 61-221 of 2 June 1961 establishing the Labour Code, art. 123.

[697] Labour Code, Law No. 84-018/PR of 18 February 1984, art. 121.

[698] Act No. 45-75 of 15 March 1975 establishing the Labour Code, art. 113.

[699] Labour Code of 28 December 1984, art. 56. National legislation further provides that a working woman will receive during her maternity leave financial aid equal to the sum of the average weekly salary which she has received during the 12 months immediately prior to the leave; see Maternity Law No. 1263 of 14 January 1974, as amended by Law No. 61 of October 1987, art. 10. By virtue of resolution No. 10/91 of 16 July 1991 of the State Committee on Labour and Social Security, women are entitled to an extended maternity leave, paid at 60 per cent of their salary until the child reaches the age of six months, or unpaid for any period beyond that time.

[700] Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, s. 112.

[701] Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952, art. 116. Female employees are entitled to half of their average salary during maternity leave.

[702] Labour Decree, 1967, s. 43.

[703] Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, s. 63. A pregnant woman may only be dismissed for serious misconduct not connected to pregnancy, or, if for reasons unrelated to pregnancy, the employer finds it impossible to retain her contract in effect.

[704] Maternity Benefit Act No. 53 of 12 December 1961, s. 12(1). In addition, the dismissal of a woman at any time of her pregnancy, if the woman but for such dismissal would have been entitled to maternity benefit, may not have the effect of depriving her of the maternity benefit.

[705] Labour Standards Law No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, art. 19(1). Dismissal is also unlawful within 30 days after the expiry of maternity leave. However, this provision does not apply in cases where the employer pays compensation for termination, or when the continuance of the enterprise has been made impossible by a natural disaster or other unavoidable cause, and the prior approval of the competent administrative officer has been obtained.

[706] Labour Standards Act No. 5309 of 13 March 1997, art. 30(2). Dismissal is also unlawful within 30 days after the expiry of maternity leave. This restriction does not apply, however, if a natural disaster, calamity, or other unavoidable circumstances prevent the continuance of a business, the approval of the Minister of Labour has been obtained, and the worker concerned is sufficiently compensated.

[707] Labour Code, Act No. 58-2970 of 1 May 1970, art. 45.

[708] Employment Act, 1955, ss. 37(1a), (2a), (2b), 40(3), 42(1). A female employee is entitled to receive from her employer a maternity allowance for the period of maternity leave if: (i) she has been employed by the employer at any time in the four months immediately before her confinement; and (ii) if she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than 90 days during the nine months immediately before her confinement. A female employee who is eligible for maternity allowance shall be entitled to receive from her employer for each day of the eligible period a maternity allowance at her ordinary rate of daily pay.

[709] Act No. 92-020 of 23 September 1992 establishing the Labour Code, art. L.183.

[710] Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book I, s. 33.

Mexico,[711] *Morocco,*[712] *Niger,*[713] *Pakistan,*[714] *Philippines,*[715] *Rwanda,*[716] *Senegal,*[717] *Singapore,*[718] *Sri Lanka,*[719] *Syrian Arab Republic,*[720] *Togo*[721] and *Turkey,*[722] where no employer may give notice of dismissal to a female employee while she is on maternity leave or on such a day that the notice will expire during her absence.

150. In some countries, protection against unfair dismissal extends beyond the maternity leave period and covers either part or the full length of pregnancy as well as a period of childcare after childbirth which may vary from one to three years. In *Bulgaria,*[723] *Czech Republic,*[724] *Estonia,*[725] *Latvia,*[726] *Republic of*

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[711] Federal Labour Act, as amended up to 1 October 1995, art. 47; Political Constitution of the United Mexican States, art. 123A (XXII); Social Security Act of 19 December 1995, art. 101. Expectant mothers are entitled to an economic subsidy equivalent to 100 per cent of their last daily salary during a period of 42 days before the delivery and 42 days after.

[712] Decree of 2 July 1947 to regulate employment, art. 18.

[713] Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code, art. 103.

[714] West Pakistan Maternity Benefit Ordinance, 1958, s. 7(a).

[715] Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 137(2), (3), and Social Security Act No. 8282 of 1997, s. 14-A. A female worker who has paid at least three monthly contributions in the 12-month period immediately preceding the semester of her delivery or miscarriage has the right to receive a daily maternity benefit equivalent to 100 per cent of her average daily wage for 60 days.

[716] Labour Code, Act of 28 February 1967, arts. 128, 130. Women workers are paid two-thirds of the wage they were earning at the time of interruption of the work.

[717] Labour Code, Law No. 97-17 of 1 December 1997, art. L.143.

[718] Employment Act (Ch. 91), as amended to 30 April 1996, s. 81.

[719] Maternity Benefits Ordinance, ss. 10, 10A(1), and Maternity Benefits (Amendment) Act No. 43 of 1985, s. 3(1a). A woman worker is entitled to maternity benefit at the prescribed rate for the entirety of the period of two weeks immediately preceding her confinement and of the period of ten weeks immediately following her confinement.

[720] Law No. 91 of 5 April 1959 establishing the Labour Code, arts. 134, 135. A female worker receives 70 per cent of her wages, on condition that she has completed seven consecutive months of service with the same employer before ceasing work.

[721] Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 112.

[722] Labour Act No. 1475 of 25 August 1971, arts. 17(I), 70.

[723] Labour Code of 24 March 1986, as amended to 1996, art. 333(1). The daily pecuniary indemnification for female workers who are pregnant or have recently given birth may be set at 90 per cent of the daily average wage, but not less than the national minimum daily wage, for an overall term of 135 days.

[724] Labour Code, Act No. 65/1965, as amended up to 1996, ss. 48(1d), 157(3). National legislation specifies that while on maternity leave female employees do not have right to wages and that their financial security is regulated according to statutory provisions on sickness insurance.

[725] Employment Contracts Act of 15 April 1992, s. 92.

[726] Labour Code, as amended to 25 October 1994, art. 178.

Moldova,[727] *Romania,*[728] *Russian Federation,*[729] *Ukraine*[730] and *Venezuela,*[731] for instance, it is unlawful to terminate the employment contract of a pregnant woman or a woman raising a child under 3 years of age. In *Angola,*[732] *Bolivia,*[733] *Chile,*[734] *Greece,*[735] *Mozambique*[736] and *Viet Nam,*[737] the employment contract of a female worker may not be terminated during her pregnancy, or up to one year after childbirth, or before the end of her maternity leave. In *Gabon,*[738] no employer may dismiss a female employee on account of her pregnancy or confinement, while any dismissal notified during the 15 months following delivery is subject to the prior authorization of the labour inspector. In *Papua New Guinea*[739] and *Zambia,*[740] the employer may not terminate the employment of a female worker from the time he is notified or becomes aware of the pregnancy of the employee until six months after confinement, while in *Brazil*[741] and *Cyprus,*[742] women workers are protected from arbitrary dismissal from the time their pregnancy is confirmed until five months following childbirth. In *Austria,*[743] *Ethiopia,*[744] *Germany*[745] and

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[727] Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 178. In case of dismissal, there is an obligation to offer alternative employment to the woman worker concerned.

[728] Labour Code, Law No. 10 of 23 November 1972, arts. 146, 152(2), 156(3). The amount of maternity compensation is calculated on the basis of the average monthly salary and varies according to seniority and the number of children.

[729] Labour Code of 9 December 1971, as amended up to 30 April 1999, art. 170.

[730] Labour Code of 11 April 1994, art. 184. In case of dismissal, there is an obligation to offer alternative employment to the woman worker concerned.

[731] Labour Act of 27 November 1990, as modified by Act of 19 June 1997, art. 384.

[732] General Labour Act No. 2/2000 of 11 February 2000, arts. 278, 272(1d).

[733] Act No. 975 of 2 May 1988 on employment stability of the pregnant worker, art. 1.

[734] Labour Code of 7 January 1994, arts. 201, 174.

[735] Presidential Decree No. 176/97 respecting measures to improve the security and health at work of working women during pregnancy, after birth, or during breastfeeding, art. 10. See also Law No. 1483/84, art. 15.

[736] Act No. 8/98 of 20 July 1998, art. 75(1d).

[737] Labour Code of 23 June 1994, art. 111(3).

[738] Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 170.

[739] Employment Act No. 54 of 21 August 1978, s. 100(1b), (2).

[740] Minimum Wages and Conditions of Employment (General) Order of 14 October 1997, s. 7(4).

[741] Transitional Constitutional Provisions Act, art. 10 (II) (b). During the leave the woman is entitled to her full salary, or if this fluctuates to her average wage over the previous six months of work.

[742] Maternity Protection Law No. 100(I) of 1997, s. 4.

[743] Maternity Protection Act of 17 April 1979, ss. 10(1), 14(1).

[744] Labour Proclamation No. 42/1993, arts. 87(5), 29(3).

[745] Federal Act on Maternity Protection of 17 January 1997, ss. 9, 11.

Switzerland,[746] an employer may not terminate the contract of employment of a female worker while she is pregnant and up to four months after confinement. In *Belgium*,[747] *Côte d'Ivoire*[748] and *Luxembourg*,[749] a female worker is protected against dismissal during the period of pregnancy and up to 12 weeks following delivery. In *Colombia*,[750] any termination of employment of a female worker occurring during her pregnancy and up to three months after childbirth is presumed to be motivated by reason of her pregnancy and is prohibited.

151. In several other countries, female workers may not be dismissed throughout the period of pregnancy and maternity leave. This is the case in *Australia*,[751] *Barbados*,[752] *Benin*,[753] *Chad*,[754] *China*,[755] *Ecuador*,[756]

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[746] *Code des Obligations*, Federal Act of 30 March 1911 supplementing the Swiss Civil Code, art. 336c(1c).

[747] Labour Act of 16 March 1971, as amended, s. 40. A pregnant worker may be dismissed only for reasons unconnected with the physical state resulting from her pregnancy or confinement. The onus of proof of those reasons rests with the employer.

[748] Act No. 95-15 of 12 January 1995 establishing the Labour Code, arts. 23.3, 23.5. Any dismissal which would be notified regardless of the worker's state of pregnancy may be quashed on production of a medical certificate proving her medical condition, except when the termination of contract is due to the serious offence of the worker concerned.

[749] Act of 3 July 1975 on maternity protection, as amended by Act of 7 July 1998, art. 10(1). Any notification of termination in breach of that proviso is null and void; the female worker may, within 15 days, request the competent labour tribunal to confirm the nullity of such termination.

[750] Labour Code, as amended through Law No. 50 of 28 December 1990, art. 35.

[751] Workplace Relations Act, 1996, s. 170CK(2f), (2h).

[752] Employment of Women (Maternity Leave) Act, 1976, s. 6(1a), (2).

[753] Law No. 98-004 of 27 January 1998 to establish a Labour Code, arts. 170, 171. Female workers have the right to receive in full their salary throughout the maternity leave period.

[754] Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, art. 112.

[755] Decree of 28 June 1988 of the State Council adopting Regulations governing Labour Protection for Female Staff Members and Workers, art. 4. For protection against dismissal, see also Act of 3 April 1992 concerning the Protection of Rights and Interests of Women, art. 26.

[756] Labour Code of 29 September 1997, art. 153.

El Salvador,[757] *Finland*,[758] *Israel*,[759] *Madagascar*,[760] *New Zealand*,[761] *Nicaragua*,[762] *Peru*,[763] *Poland*,[764] *Seychelles*,[765] *Slovenia*,[766] *Spain*[767] and *Swaziland*.[768] In *Saudi Arabia*,[769] the employer may not dismiss a female worker while she is on maternity leave and during the six months preceding the presumed date of her confinement. In *Argentina*,[770] pregnant workers are protected against unfair dismissal during a period of seven-and-a-half months before and another seven-and-a-half months after childbirth provided that they have informed their employer of their pregnancy and of the presumed date of delivery. Similarly, in *Jordan*[771] and *Lebanon*,[772] women workers may not be given notice of termination of employment as from the fifth and sixth month of pregnancy, respectively. Finally, in *Indonesia*[773] and *Thailand*,[774] labour laws proscribe in general terms the termination of the employment of a female employee because of her pregnancy.

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[757] Labour Code of 15 June 1972, as amended by Decree No. 859 of 21 April 1994, art. 113.

[758] Employment Contracts Act No. 320 of 1970, s. 37(5). For the period of maternity and parental leave workers are entitled to maternity and parental allowances specified according to the Sickness Insurance Act. In contrast, according to the Employment Contracts Act, the employer is not bound to pay the worker remuneration for the duration of the maternity leave. However, a number of collective agreements contain stipulations on the employer's obligation to pay remuneration during maternity leave. The duration of paid maternity leave varies by agreement. In the collective agreements for salaried employees in the industrial or the banking and insurance sectors the duration of paid maternity leave is usually three months. In both state and municipal administration, the duration of paid maternity leave is 72 weekdays.

[759] Employment of Women Law 5714-1954, s. 9(a), (b1).

[760] Act No. 94-029 of 25 August 1995 establishing the Labour Code, arts. 97, 98.

[761] Parental Leave and Employment Protection Act No. 129 of 10 July 1987, s. 49(1).

[762] Labour Code, Act No. 185 of 30 October 1996, arts. 141, 144. While on maternity leave, women workers are paid at the rate of their last or best salary.

[763] Legislative Decree No. 728 of 21 March 1997, art. 29(e).

[764] Act of 26 June 1974 promulgating the Labour Code, art. 177(1). However, there is no legal restriction for the termination of a contract with an employee taking care of a child under 4 years of age. During maternity leave, a woman worker has the right to maternity allowance amounting to 100 per cent of remuneration.

[765] Employment Act of 28 February 1995, ss. 57(3), 76(2a).

[766] Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, arts. 36b, 36c, 36d.

[767] Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, arts. 53(4), 55(5), as amended by Law No. 39/99 of 5 November 1999 regarding reconciliation of work and family life, art. 7(2), (3).

[768] Employment Act No. 5 of 26 September 1980, s. 105(1a).

[769] Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, arts. 164, 167, 168. During her absence on maternity leave, a female employee is entitled to half pay if she has been in the employer's service for one year or more, and to full pay if she has been in the employer's service for three years or more.

[770] Labour Contract Law No. 40.744 of 13 May 1976, art. 178.

[771] Labour Code, Law No. 8 of 1996, art. 27.

[772] Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, arts. 29, 52. According to the terms of new draft legislation, art. 52 would be amended to prohibit the termination of employment of women workers during the entire pregnancy period.

152. In a few countries, labour laws do not provide for a general prohibition against the dismissal of expectant workers or nursing mothers but rather lay down guarantees of procedural fairness in order to avoid abuses. In *Portugal*,[775] for instance, in order to terminate the employment of a female worker who is pregnant, has recently given birth or is breastfeeding, the employer must request the prior opinion of a tripartite committee exercising its functions in the sphere of equal opportunities between men and women; in case of unfavourable opinion, he may only proceed by way of a judicial decision that recognizes the existence of a valid justification for dismissal. In *Haiti*,[776] any termination of contract of a pregnant woman or breastfeeding mother needs to be communicated to the Labour Directorate with a view to obtaining a specific authorization. Similarly, in the *Dominican Republic*,[777] the dismissal of a female worker for reasons of pregnancy is null and void, and the employer is obliged to inform the Labour Department of the termination of the employment contract of any pregnant worker, or of a worker who has recently given birth, for it to determine whether the dismissal was motivated by considerations related to pregnancy. Failing to conform to such procedure, the employer has to pay the worker an indemnity equal to five monthly salaries. In *Costa Rica*[778] and *Guatemala*[779] pregnant or breastfeeding workers may not be dismissed except if the dismissal was motivated by the worker's serious misconduct in which case the matter has to be brought before the labour tribunals or the inspectorate for decision. In *Uruguay*,[780] women workers dismissed on pregnancy or maternity grounds have the right to receive a special compensation equal to six monthly salaries.

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[773] Ministerial Regulation No. 03/MEN/1996 on prohibition of termination of employment for women due to be married, pregnant, or give birth, art. 2.

[774] Labour Protection Act (B.E.2541) of 12 February 1998, art. 43.

[775] Act No. 4/84 of 5 April 1984 concerning maternity and paternity protection, as amended by Act No. 142/99 of 31 August 1999, art. 24.

[776] Labour Code, Decree of 24 February 1984, arts. 320, 326, 330. Throughout the maternity leave, a woman worker receives her full salary as if she continued working, while the employer is under the obligation to maintain her post available during her absence.

[777] Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 233.

[778] Labour Code of 1943, as amended up to 1996, art. 94.

[779] Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995, art. 151(c). In case the employer fails to comply with established procedure, the female worker may claim her reinstatement and the payment of due wages.

[780] Law No. 11.577 of 14 October 1950 and Decree of 1 June 1954.

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153. In conclusion, the Committee notes that the three night work Conventions under review appear to have a diminishing impact on national laws and practice. Not only does the level of ratification remain low, but a number of countries formally bound by the Conventions have ceased to apply them and often have contradictory legislation. Several others are in the process of introducing legislative amendments lifting all restrictions on women's night work, while others have announced their intention to proceed to their denunciation. National laws are replete with permissive clauses and exceptions which often bear little relevance to those allowed by the Conventions. Some States have even introduced such broad exceptions that they practically nullify the basic principles of the prohibition of night work for women. Even among States parties to the Conventions, the standard of an 11-hour night rest period is hardly applied. In most cases, the ban on women's night working extends to an average of seven to nine hours.

154. In contrast, the prohibition of night work for minors, including girls and young women, would seem to enjoy much broader acceptance. In the great majority of countries, young persons under 18 years of age may not be assigned to night work with only limited exemption possibilities, mainly for reasons of vocational training.

155. Also by contrast, in almost all countries, night work is proscribed for expectant or nursing mothers, either as a consequence of the absence from work during the maternity leave period or for a longer period before and after childbirth.

CHAPTER 4

CONVENTIONS ON THE NIGHT WORK OF WOMEN AND THE PRINCIPLE OF EQUAL TREATMENT

156. For the great majority of the governments which provided replies for the purposes of the present survey, all Conventions on night work of women are synonymous with sex discrimination and are contrary to the overriding principles of equality of opportunity and equal treatment in the workplace.

157. Several States *(Brazil, Colombia, Germany, Panama, Portugal, Seychelles, Spain)* expressed the view that the prohibition of night work of women would be contrary to national constitutional law. In the case of *Germany*, reference was made to a 1992 judgement of the Federal Constitutional Court which ruled that the prohibition on night work for women in force at that time was incompatible with article 3 of the Basic Law, which provides, inter alia, that no one shall be discriminated against on account of sex.[1] The Government of *Panama* recalled that the Supreme Court in its judgement of 29 April 1994 had found article 104 of the Labour Code prohibiting women's employment in underground work to be unconstitutional, considering that the protection intent reflected in that provision was contrary to the principles of equality and non-discrimination in employment as endorsed in articles 19 and 20 of the Constitution. Similarly, the Government of *Colombia* referred to Constitutional Court judgement C-622 of 1997 by which article 9 of the 1967 Labour Code prohibiting night work for women in industry was declared non-applicable.[2] For *Portugal*[3] and *Spain*,[4] the Conventions and the Protocol are contrary to the constitutional principle of equality for all citizens before the law, while *Brazil* invoked the principle of equality between men and women, enshrined in the new Federal Constitution of 1988, to argue that the legislation giving effect to Convention No. 89 has now fallen into disuse. According to the views of other governments, specific legislation prohibiting night work of women would contravene national anti-discrimination laws such as the Federal Sex Discrimination Act of 1984 in the case of *Australia*, and Title VII of the Civil Rights Act in the case of the *United States*, or existing gender-neutral night work legislation as in the case of *Namibia*.

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[1] For more on this decision, see "Night work for women", in *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 8, 1992, pp. 180-188.

[2] In the words of the judgement, "there is no doubt that under the present-day constitutional framework, all men and women should participate under the same conditions in the economic, labour, social and political processes and activities, which would result in the elimination of all restrictions on the enjoyment of women's rights".

[3] Constitution of 2 April 1976, arts. 13, 58(3b).

[4] Constitution of 27 December 1978, art. 14.

158. In the opinion of some governments, any prohibition on women working at night would contravene obligations arising from the formal acceptance of other multilateral treaties. The Government of *Australia*, for instance, stated that ratification of the Conventions or of the Protocol on night work of women would infringe their obligations under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and could also potentially be in conflict with the ILO's own Workers with Family Responsibilities Convention, 1981 (No. 156), and Recommendation (No. 165). The Government of *Suriname* also referred to the need to harmonize national legislation with CEDAW rules and principles as a ground for possible denunciation of Convention No. 41. As for the Governments of *Peru* and *South Africa*, they considered Convention No. 89 to be at variance with the provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

159. There were also numerous statements *(Botswana, Canada, Netherlands, New Zealand, Norway, Peru, Spain, United Kingdom, Uruguay)* to the effect that the mere intention to regulate women's access to night employment rather than to prescribe gender-neutral restrictions for night work was inherently discriminatory in nature and remained unjustifiable. The Government of *Cuba* expressed the view that a general prohibition of night work for women is discriminatory and in conflict with the principle of equality of opportunity while it is also contrary to the policy of full employment bearing in mind that women make up 43 per cent of the manual labour force and as much as 68 per cent of the technical workforce of the country. *Belarus* and *Rwanda* took the position that policies aimed at creating equal opportunities for women and men had become essential and would therefore favour the adoption of night work regulations applicable to all workers. For its part, the Government of *Greece* recalled that, in the light of the *Stoeckel* judgement delivered by the European Court of Justice in 1992, prohibiting the night work of women had been found to be incompatible with the European Council Directive 76/207/EEC. The Government of *Chile* referred to the arguments put forward at the time of the denunciation of Convention No. 4 and reiterated that the instruments prohibiting night work of women in industry are conceptually rigid, discriminatory and unrealistic. It also stressed that legal limitations on women's working hours prevented the total integration of women into the labour market and were unjustifiably restrictive of women's equal rights in matters of employment and occupation. The Government of *Suriname* considered that the prohibition of night work for women can only be perceived as an obstruction to equal employment opportunities. The Governments of the *Czech Republic*, *Israel*, *Japan* and *Singapore* recalled that recent amendments to past laws prohibiting women's night work were introduced precisely for the purpose of ensuring equal employment opportunities for female workers and further promoting equal treatment of men and women.

160. In their Special Survey on Equality in Employment and Occupation in respect of Convention No. 111, 1996, the Committee referred to the definition of discrimination in Article 1, paragraph 1(a), of Convention No. 111 as "any distinction, exclusion or preference [based on sex] which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".[5] They observed that distinctions based on sex, which most commonly disadvantage women, "stem from traditional attitudes that still persist strongly in certain societies".[6] The Committee noted that "Whilst in the early days of the Organisation emphasis was placed primarily on protecting women from working conditions that were excessively arduous and hazardous to their health, the current trend is to give greater importance to promoting equality between men and women."[7] In considering special measures of protection or assistance, they observed that "special measures tend to ensure equality of opportunity and treatment in practice, taking into account the diversity of situations of certain persons, so as to halt discriminatory practices against them. These types of preferential treatment are thus designed to restore a balance and are or should be part of a broader effort to eliminate all inequalities"[8] And, further, that "Because of the aim of protection and assistance which they are to pursue, these special measures must be proportional to the nature and scope of the protection needed or of the existing discrimination."[9]

161. The Committee considers that recognition of the principle of equality between men and women is intended not only to eliminate legal provisions and practices which create advantages and disadvantages on the basis of gender, but also to achieve now and in the future effective equality of rights for both sexes by equalizing their conditions of employment and their roles in society so that women can enjoy the same employment opportunities as men. For this reason, differences in treatment between men and women can only be permitted on an exceptional basis, that is when they promote effective equality in society between the sexes, thereby correcting previous discriminatory practices, or where they are justified by the existence, and therefore the persistence, of overriding biological or physiological reasons, as in the case in particular of pregnancy and maternity. This requires a critical re-examination of provisions

[5] See ILC, 83rd Session, 1996, Report III (Part 4B), para. 23, p. 12.

[6] ibid., para. 35, p. 15.

[7] ibid., para. 11, p. 4.

[8] ibid., para. 135, p. 43.

[9] ibid., para. 136, p. 43.

which are assumed to be "protective" towards women, but which in fact have the effect of hindering the achievement of effective equality by perpetuating or consolidating their disadvantaged employment situation.

162. The Committee therefore concludes that a blanket prohibition on women's night work, such as that reflected in Conventions Nos. 4 and 41, now appears objectionable and that it cannot be defended from the viewpoint of the principle of non-discrimination. Any regulatory framework, which seeks to restore a balance and eliminate inequalities for women, should not obstruct their access to employment or to particular occupations.

163. In the Committee's view, providing for gender equality and non-discrimination in employment will in some cases involve a gradual approach towards the desired objective. The more this process progresses, the less the need is felt for protection of women workers, as is recognized in Convention No. 111. It would, however, be unwise to believe that eliminating at a stroke all protective measures for women would accelerate the effective attainment of equality of opportunity and treatment in employment and occupation in countries at different stages of development. Before repealing existing protective legislation, therefore, member States should ensure that women workers will not be exposed to additional risks and dangers as a result of such repeal.

164. The Committee therefore considers that the relationship between the prohibition of night work and the universal acceptance of non-discrimination in employment and occupation as a fundamental human right may, in some situations, call for a phased approach. As was pointed out by the Office at the time of the adoption of the UN Convention on the Elimination of All Forms of Discrimination Against Women, States parties to the instruments under review in this survey are under an obligation periodically to review their protective legislation with a view to determining the appropriateness of eventually repealing those laws and regulations in conflict with the principles of the Convention. It is recognized, therefore, that the ban on women's night working in industry stands in the way of attaining the ultimate objective of the elimination of all forms of discrimination against women and that eventually it has to be dispensed with. It should not be forgotten, nevertheless, that the review process, which is to be guided by the identified needs and priorities of each country, and in which it is hoped that women workers themselves will play a full part, cannot be expected to proceed with uniform criteria or to produce the desired results within a uniform time frame in all of them. The Committee can therefore endorse the view that the gender-specific prohibition against industrial work during the night should progressively become irrelevant; and it is hoped that the prohibition will be overtaken by laws and practices, which offer adequate protection to all workers. This is, though, subject to the understanding that national and, within countries, regional and sectoral conditions and progress in achieving the elimination of discrimination vary considerably; and that some women workers will still need protection along with the pursuit of genuine conditions of equality and non-discrimination.

165. In examining reports submitted under article 22 of the ILO Constitution on the application of Convention No. 111, the Committee has had on a few occasions the opportunity to comment on protective legislation relating to night work of women (for instance, direct requests addressed to the Governments of *Algeria*, *Belarus*, *Jordan* and *Zambia* in 1999, and to *Malawi* in 1998). While being aware that "the specific needs of each country may vary", the Committee has invariably invited the governments concerned to "consider the possibility of reviewing these provisions – in consultation with the social partners and in particular with women workers – to appreciate whether it is still necessary to prohibit access to women to certain occupations". The Committee has also consistently drawn attention "to the provisions covering this question in: (a) the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89); (b) the Night Work Convention, 1990 (No. 171), and the Safety and Health in Mines Convention, 1995 (No. 176), with the corresponding Recommendations; and (c) the ILO resolution on equal opportunities and equal treatment for men and women in employment, 1985". In another direct request addressed to the Government of *Lebanon* in 1997, the Committee requested the Government "to reconsider the relevant provisions of the Labour Code [...] in light of the modern approach to bans on women's night work which is based on a balanced approach between protection of the mother and child and opening employment opportunities to women".

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166. There is no doubt that women are amongst the categories of workers who are the most disadvantaged in the world of work. Women continue to suffer from considerable inequality in the labour market. Unemployment rates for women are higher than for men in two countries out of three. Average hours of unpaid work by women tend to be about twice those of men in the industrialized economies as a whole. Women account for the major share of part-time employment, that is about 70-80 per cent of the total in most of the advanced economies.[10] These figures only serve to demonstrate the imperative need for greater equality and measures to combat persistent phenomena such as occupational segregation and wage discrimination, in particular since women make up nearly 70 per cent of the world's poorest population and more than 65 per cent of the illiterate.

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[10] See *World Labour Report 2000 – Income security and social protection in a changing world*, pp. 43-49. See also: L.L. Lim, *More and better jobs for women – An action guide*, 1996, pp. 9-35.

167. Even though night work is generally acknowledged to be harmful for all workers, it is sometimes regarded as having a stronger impact on some women. This is not because of any lesser biological or psychological aptitude for night work, but is rather due to social traditions, deep-rooted in many countries, which require from women both industrial and household work. Women are also subject to abuses such as physical assault and, when working at night, may be particularly vulnerable if transport and related systems are inadequate.

168. The Committee recognizes that the full realization of the principle of non-discrimination requires the repealing of all laws and regulations which apply different legal prescriptions to men and women, except for those related to pregnancy and maternity. At the same time, the Committee is aware that, as a long-term goal, the full application of this principle will only be attained progressively through appropriate legal reforms and varying periods of adaptation, depending on the stage of economic and social development or the influence of cultural traditions in a given society.

169. It is true that in those countries where technological progress has removed or reduced the hazards involved in industrial occupations and where the evolution of ideas about women's role in society has led to effective measures being put in place to eradicate discrimination and removed the need for special protective measures, Convention No. 89 may appear to be an anachronism. The struggle for the protection of women, which was a high point of the trade union movement, was inspired by social conditions and a view of women which have nowadays largely disappeared in many countries. The Committee believes, however, that, for some parts of the world, progress towards full implementation of the principle of non-discrimination will proceed at a more gradual pace. The Committee cannot be expected to identify at which stage a country or a particular part of a country will be able to determine the actual impact of any existing special protective measures prohibiting or restricting night work for women and to take appropriate action. Nor should it substitute its own view for the view of those best placed to decide this issue, not least the women themselves. The protections afforded by Convention No. 89 and its Protocol should therefore be available to those women who need them, but they should not be used as a basis for denying all women equal opportunity in the labour market.

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CHAPTER 5

LOOKING AHEAD: RATIFICATION PROSPECTS

170. It is clear that the reticence of most non-ratifiers is due to their conviction that the Conventions prohibiting night work for women have outlived their time and that restricting women's access to night employment is today undesirable on two principal accounts: first, it runs counter to the overriding principle of gender equality in that it restricts the individual worker's freedom of choice on working time solely on the basis of sex. Secondly, it prevents the optimal utilization of the available workforce and thus hinders productivity. The inconsistency between the restriction of women's access to night employment in industry and the principle of non-discrimination and equality of treatment has been invoked by all 15 States that have so far denounced Convention No. 89.

171. It should also be noted that the Office has recognized on several occasions that member States are required to initiate a review process of their protective legislation aiming at the progressive elimination of any provisions contrary to the principle of equal treatment, except for those connected with maternity protection, and with due account being taken of national circumstances. This results from an ongoing commitment to apply the same standards of protection to men and women alike in accordance with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and from the widely ratified UN Convention on the Elimination of All Forms of Discrimination Against Women.

172. With regard to the ratification prospects of the four instruments under review, the Committee refers to Convention No. 89 only, since Convention No. 41 is closed to ratification, the Protocol of 1990 cannot be ratified alone, while Convention No. 4 is most unlikely to receive any new ratifications some 81 years after its adoption. It is indicative that Convention No. 4 was last ratified 23 years ago, and that the Working Party on Policy regarding the Revision of Standards in its 1996 review of the Conventions on night work of women had estimated the ratification prospects of Convention No. 4 as minimal.[1]

173. The Committee can only stress that, according to the replies of member States, the prospects of ratification of Convention No. 89 and its Protocol appear to be thin. In fact, only two States parties to Convention No. 89

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[1] See GB.267/LILS/WP/PRS/2, p. 27.

(Bangladesh, Slovenia) have reported that they are considering favourably the possibility of ratifying the 1990 Protocol to Convention No. 89 without indicating, however, whether the ratification process had been formally engaged so far. In the case of *Slovenia*, the new draft Labour Relations Act is believed to take full account of the provisions of the Protocol and is expected to provide the legal basis for the ratification of that instrument, while in *Bangladesh* the Tripartite Consultative Council has recommended the ratification of the Protocol, and its recommendation is now being submitted to the Cabinet and to a parliamentary commission. It should also be noted that two of the three States parties to the 1990 Protocol, i.e. *Cyprus* and the *Czech Republic*, have stated their intention to proceed to the denunciation of Convention No. 89 shortly. Among the States which are non-parties to any of the Conventions under review, only the Government of *Papua New Guinea* expressed the view that there are good prospects of ratifying Convention No. 89 and its Protocol after completion of a major review of the Employment Act, 1978.

174. Several States *(Australia, Botswana, Canada, Finland, Hungary, Japan, Namibia, Singapore, Sweden, United States, Viet Nam)* have firmly excluded the possibility of ratifying any of the instruments considered here. In their view, preventing women from having access to night employment, with the exception of expectant or nursing mothers, would constitute direct discrimination and would unreasonably deprive women of job opportunities. Furthermore, the Government of *Bulgaria* stated that it did not envisage ratification as it has started accession negotiations with the European Union and Convention No. 89 has been found to contradict Community law.

175. Many countries expressed serious concern about the implications that night work prohibitions or restrictions for women would have on employment. The Governments of *Belarus* and *Ukraine* have stated that a major obstacle to ratification was the sharp increase of unemployment especially affecting women and also the growing number of single-parent families which has rendered night work increasingly widespread. According to the report of the Government of *Ethiopia*, the socio-economic underdevelopment and in particular the high unemployment scenarios currently prevailing in the country constitute a major disincentive to ratification of Convention No. 89 and its Protocol. The Government of *Mexico* recalled that women's participation in the country's workforce had doubled since 1970 from 17.6 per cent to 36.8 per cent in 1997, while a policy of prohibition or restriction of night work for women would inevitably reduce their working opportunities. The concern about employment seems also determinant in the case of *Argentina*. The Government of *Mauritius* reported that the provision of the Industrial Expansion Act by which women working in export processing zones were excluded from the scope of the prohibition against night work has been instrumental in the success of the EPZ regime, and that therefore the situation could not be changed without implications on recruitment of female workers and employment levels. Finally, the Government of *Dominica* stated that, even though its legislation is mostly in conformity with the provisions of Convention No. 89, formal ratification of this Convention would curtail employment of women in sectors such as manufacturing, hotel and restaurant or wholesale and retail trades and would pose additional financial burdens to small family-operated businesses.

176. A few countries *(Antigua and Barbuda, Ecuador, Zimbabwe)* saw no need to ratify any of the instruments under review in the near future, as existing legislation did not present difficulties and the interests and welfare of women workers were sufficiently protected. Other countries such as *China* did not envisage ratification for the time being because national laws and regulations were not believed to be as yet up to the standards of the Conventions.

177. Among the States parties to Convention No. 89, two Members *(Dominican Republic, Zambia)* have announced their decision to denounce the Convention at the expiration of the current period of ten years when the Convention will again be open to denunciation, while two other Members *(Austria, South Africa)* have reported that the denunciation of Convention No. 89 was under consideration. Another three Members *(Brazil, Ghana, Malawi)* have made known that, following the recent enactment of new legislation, Convention No. 89 had ceased to apply and that therefore it would not be possible to ratify the Protocol. Two more Members *(Romania, Rwanda)* have indicated that the ratification of the Protocol was not likely, as modern practice was in favour of the abolition of the night work prohibition for women and socio-economic conditions such as rising unemployment called for initiatives and policies promoting equality of opportunity between men and women. Among the States having ratified Convention No. 41, *Estonia* has declared that it considers all four instruments on women's night working to be outdated and that it will denounce Convention No. 41 on the first occasion, while *Suriname* reported that the possibility of denunciation of Convention No. 41 was still under examination.

178. As regards the observations received from employers' and workers' organizations, the *Korean Employers' Federation (KEF)* expressed the view that the rationale of the night work prohibition for women has been much weakened in recent decades and therefore the ratification of the relevant instruments is viewed as undesirable. In a similar vein, were the comments made by the *Mauritius Employers' Federation (MEF)* according to which there seems to be no justification for the ratification of any of the Conventions or the Protocol given the present situation of the country's laws and practices.

179. In conclusion, the outlook for the possible acceptance of the Protocol in the coming years appears uncertain. Indeed, the fact that two of the three member States parties to the Protocol *(Cyprus, Czech Republic)* have announced their intention to withdraw their acceptance is far from encouraging.[2] For a number of countries, the problem seems to stem from the fact that the Protocol cannot be ratified separately from the "mother" Convention so that, even if they were prepared to accept the innovative provisions of the Protocol, they would still have serious objections to accepting first the principle of the prohibition of night work for women in the terms used in Convention No. 89. However, the Committee considers that Convention No. 89, as amended by the 1990 Protocol, remains the most pertinent legal instrument for those member States which would not yet be prepared to dismantle all protective regimes for women in the name of gender equality, while at the same time seeking flexibility in the application of such protective legislation and of course giving full consideration to the ratification of the Night Work Convention, 1990 (No. 171).

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[2] It is most uncommon for international labour Conventions to be denounced only a few years after ratification. The following table shows the very limited cases where member States

180. The Committee notes that governments were also requested to provide information concerning the possible ratification of the above-cited Convention.[3] The replies have not always been explicit or elaborate on this point, yet they allowed the Committee to discern some emerging trends with respect to this instrument and its measure of acceptance.

181. In one country *(Brazil)*, the Bill ratifying Convention No. 171 is currently processed by the Committees of the National Congress and the ratification process could be completed shortly. In another country *(Costa Rica)*, Convention No. 171 is now before the Legislative Assembly for discussion, while in *Slovenia* legislation is being amended to take full account of the principles of the Convention following which ratification could be undertaken. Two countries *(Burundi, Germany)* have reaffirmed their intention to ratify the Convention without giving, however, any further details. The Governments of four countries *(El Salvador, Greece, Romania, Yemen)* have reported that consultations with social partners have been initiated, while *Egypt* has indicated that the question of ratification is under consideration. Finally, two countries *(Morocco, Rwanda)* have stated that they are in the process of enacting specific regulations inspired by Convention No. 171 without specifying, however, their intentions as to ratification.

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proceeded to denounce a Convention less than five years after ratification (excluding denunciations as a result of the ratification of revising instruments):

Country	*Convention*	*Date of ratification*	*Date of denunciation*
Brazil	C. 4	1934	1937
	C. 110	1965	1970
	C. 158	1995	1996
Malta	C. 4	1988	1991
Mauritania	C. 4	1961	1965
Sri Lanka	C. 4	1951	1954
Venezuela	C. 103	1982	1985

[3] Convention No. 171 came into force on 4 January 1995 and, as at 8 December 2000, it had been ratified by six member States as follows: Belgium, Cyprus, Czech Republic, Dominican Republic, Lithuania and Portugal.

182. On the other hand, a number of countries (*Angola, Canada, Colombia, Cuba, Ecuador, Japan, Malawi, Malaysia, Mauritius, New Zealand, Nicaragua, Pakistan, Paraguay, Spain, Thailand, Uruguay*) have indicated that they are not considering ratification at this stage. More concretely, the Government of *Canada* expressed doubts as to the compatibility of the provisions of the Convention with national legislation which is of general application and which does not distinguish between night and day work. In the view of the Government of *Spain* Convention No. 171 reflects a negative and restrictive outlook on night work and is excessively regulatory in nature. The Government of *Japan* considered that although labour laws comply with most of the standards laid down by Convention No. 171, there are still problems hindering ratification. In the case of *Mauritius*, the hesitation was due to concerns for employment in its export processing zone. Finally, it should be noted that, for the Government of *South Africa*, even the provisions of Convention No. 171 are discriminatory since they are inflexible and still place limitations on the night employment of women.

183. The Committee has also been in receipt of comments by four workers' organizations, all of which called upon their respective governments for the prompt ratification of Convention No. 171. The *New Zealand's Council of Trade Unions (CTU)* expressed support for the ratification of Convention No. 171 arguing that the national economy had undergone substantial deregulation since 1984, that collective bargaining at the national level had been reduced to almost nothing, and that much of the protection for night workers that existed in collective agreements at the time of the denunciation of Convention No. 89 no longer existed. Likewise, the *Federal Chamber of Labour (BAK)* of Austria expressed a favourable view with regard to ratification of Convention No. 171 considering gender-neutral protective measures to be necessary in view of the planned denunciation of Convention No. 89 and the anticipated legislative changes with respect to night work for women. For its part, the *Central Organization of Finnish Trade Unions (SAK)* considered it very important that Finland should start preparations for ratification of Convention No. 171. Finally, the *Confederation of Mexican Workers (CTM)* stated that the ratification of Convention No. 171 could be useful for workers because it would enhance protection for women and young workers at night.

184. In conclusion, it would appear that member States would tend to have, in general, a more positive attitude towards Convention No. 171 than towards Convention No. 89 together with its Protocol which apply exclusively to women workers. Yet, the Committee notes that Convention No. 171 has been ratified, or is expected to be ratified based on information contained in the reports, by those States which have already denounced or intend to denounce Convention No. 89. Although the two instruments are often perceived as mutually exclusive, member States could still, technically speaking, ratify both Conventions. The two instruments are the result of much differing approaches to the problem of night work: whereas the Protocol follows the gender-oriented perspective of Convention No. 89, Convention No. 171 addresses the issue of night work for both men and women in its occupational safety and health dimension. While a major premise of the Conventions on night work of women is the vulnerability and special need of protection of the female worker, Convention No. 171 shifts its focus to the nature of night work as such, meaning work detrimental to health, generative of difficulties for the family and social life of the worker, and calling for special compensation. The Committee deems it necessary, therefore, to emphasize that the standards set out in the Protocol and the Convention of 1990 on night work may operate perfectly well in parallel in those countries which decide to relax some but not all limitations on women's night work and which want to offer optimum protection to those female workers who would be entitled to engage in night work.

FINAL REMARKS

The prohibition of women's night work in industry: Current thinking and practice

185. The Committee welcomes the selection by the Governing Body of the night work Conventions Nos. 4, 41, 89 and of the Protocol of 1990 to Convention No. 89 as the subject of a General Survey. Some 94 years after the adoption of the first international agreement on the subject and only five years after the entry into force of Convention No. 171, the latest ILO instrument dealing with the issue of night work, the Committee feels that a stocktaking exercise on the application of ILO standards concerning the employment of women during the night in industry is long overdue. The four instruments which form the subject of the present survey have received since their adoption a total of 165 ratifications. There have, however, been 66 denunciations and more States have announced their intention to denounce these Conventions. This shows, on the one hand, that the instruments examined here have been adequately ratified but, on the other, that some of those instruments have most likely lost their universal relevance over the years.

186. The present survey traces the evolution of ILO standards on night work by women in industry in the last 80 years. From the quasi-absolute prohibition on women's night work laid down in the Night Work (Women) Convention, 1919 (No. 4), to the provisions of the 1990 Protocol allowing for exemptions to the prohibition contained in Convention No. 89, the Committee has examined the ILO's efforts to design international labour instruments on night work by women in industry capable of offering the best guarantees of protection while keeping up with social progress and contemporary thinking on the situation of women in the working world. The Committee observes, in this regard, that the historical development of women's night work as traced in this survey demonstrates that the question of devising measures that aim at protecting women generally because of their gender (as distinct from those aimed at protecting women's reproductive and infant nursing roles) has always been and continues to be controversial. The survey of national practice also reveals that the general trend worldwide is to provide protection for women in night work in a fashion that does not infringe their rights to equality of opportunity and treatment.

countries which are still bound by Convention No. 4, it appears that three *(Cuba, Italy, Spain)* have simply omitted to denounce it since they have already denounced Convention No. 89. One country *(Lithuania)* has enacted internal legislation to denounce the Convention but has not as yet formally registered its denunciation with the International Labour Office, while another country *(Austria)* will in all probability denounce it soon as a result of its obligations arising from its EU membership. As for the remaining 25 ratifications, 21 are from countries which are already parties to one of the revising instruments – either Convention No. 41 (12 ratifications) or Convention No. 89 (nine ratifications) – and as such may not be deemed to have an interest in remaining bound by Convention No. 4.[2] The Committee is, therefore, of the opinion that for all practical purposes Convention No. 4 no longer makes a useful current contribution to attaining the objectives of the Organization, and that ILO member States should be prepared eventually to take appropriate action. This should be "shelved" and, when the time comes, should be included among the Conventions which will be considered for abrogation.

194. With regard to Convention No. 41, the Committee notes that it is currently in force for only 16 countries and that it remains closed to further ratifications following the adoption of the revising Convention No. 89. It should be noted that at the time Convention No. 41 was closed to ratification, only four member States were still bound by its provisions and that the current number of ratifications is only due to the fact that some African countries, upon acceding to independence and becoming Members of the ILO in the late 1950s and early 1960s, committed themselves to continue to apply the Conventions previously ratified by the colonial powers. The Committee further notes that one country *(Estonia)* has announced its intention to denounce this instrument on the first occasion, and that in three other countries *(Argentina, Benin, Suriname)* the Convention has ceased to apply in practice following the adoption of new labour legislation lifting the prohibition of night work for women. The Committee is, therefore, led to the conclusion that, not only is Convention No. 41 poorly ratified and its relevance is diminishing, but also that it would be in the interest of those member States which are still parties to this Convention to ratify instead

[2] In this connection, the Committee wishes to recall its earlier observation on Convention No. 4 concerning the problem of the simultaneous application of two Conventions on the same subject. Noting that the legislation of some Members simultaneously bound by two Conventions concerning night work of women, while in harmony with the more flexible provisions of a revising Convention, did not fully conform with certain clauses contained in Convention No. 4, the Committee commented that "a State Member which is bound simultaneously by two Conventions concerning night work of women is confronted with the following alternatives: (a) to ensure the observance of the obligations arising cumulatively from the two Conventions so that it can avail itself only of those permissive clauses (exceptions) which are authorized both under Convention No. 4 and the revising Convention; or (b) if the Member concerned wishes to avail itself of exceptions authorized under the revising Convention but which go beyond those permitted under Convention No. 4, to denounce the latter"; see ILC, 48th Session, 1964, Report III (Part IV), p. 39.

the revising Convention No. 89 and its Protocol which allow for greater flexibility and are more easily adaptable to changing circumstances and needs.

Protection and equality: The obligation for periodic review

195. There is no doubt that the present trend is to move away from a blanket ban on night work for women in industry and to give the social partners at the national level the responsibility for determining the extent of the permitted exemptions. It is also evident that more attention is now being paid to regulating night work for both men and women. On the basis of the reports reviewed, it is clear that many countries – some of which draw upon the technical assistance of the ILO – are in the process of easing or eliminating legal restrictions on women's employment during the night with the aim of improving women's opportunities in employment and strengthening non-discrimination. The Committee has been pleased to note that this trend is not limited to regions or countries which have already reached a certain stage of social or economic development, but often extends to countries where social attitudes and stereotypical views about the position of women in the labour market persist. While expressing its firm hope that such a trend will continue, the Committee considers it necessary to emphasize that a process of revision should not result in a legal vacuum with night workers being deprived of any regulatory safeguards. Night work is generally considered to have harmful effects for all workers and calls for a regulatory legal framework.

196. As the Committee has been consistently pointing out in individual observations concerning the question of revision of gender-specific legislation, member States are under an obligation to review periodically their protective legislation in light of scientific and technological knowledge. This obligation stems from Article 11(3) of the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women, as later reaffirmed in point 5(b) of the 1985 ILO resolution on equal opportunities and equal treatment for men and women in employment, and similarly endorsed in the legal opinion of the Office regarding the compatibility between the UN Convention on the Elimination of All Forms of Discrimination against Women and certain ILO Conventions on the protection of women.

197. Besides, the obligation for periodic review simply gives expression to an overriding principle, according to which the pursuance of a policy of equality of opportunity and treatment in employment or occupation needs continuous action. As the Committee has underlined in a previous study, "the promotion of equality of opportunity and treatment does not aim at a stable situation that may be attained once and for all, but rather requires a permanent process so that policy may be adjusted to changes in society in order to eliminate the various forms of distinctions, exclusions and preferences based on grounds laid down in the 1958 instruments".[3]

198. In the process of reviewing special protective legislation with a view to excising all discriminatory constraints, special consideration should be given to the principles contained in the Workers with Family Responsibilities Convention, 1981 (No. 156). As the Committee observed in the 1993 General Survey on this Convention, "because measures to allow men and women to harmonize their work and family commitments are a natural extension of the well-accepted principles on equality, Convention No. 156 and Recommendation No. 165 must be viewed as a necessary part of the overall goal of ensuring that every man and woman should have the opportunity to play a full role in social, economic and public life and also in the family".[4]

The quest for a new balance: The ILO tools

199. The Protocol to Convention No. 89 represents a further step in the process designed for those States that wish to offer the possibility of night employment to women workers and feel that some institutional protection should remain in place to avoid exploitative practices and a sudden worsening of the social conditions of women workers. The Protocol is proposed as a tool for a smooth transition from outright prohibition to free access to night employment. The Night Work Convention, 1990 (No. 171), is part of the same process since it was drafted for the needs of those countries which would be prepared to eliminate all restrictions on night work for women and to conclude that the harmful effects of night work should be regulated, if at all, for men and women alike.

200. It should thus be clear that, in guiding its standard-setting action in matters of women's employment – often depicted as a dilemma of protection *or* equality – the ILO has always opted for protection *and* equality. In adopting the Protocol to Convention No. 89 and Convention No. 171, the ILO has sought to satisfy the differently prioritized needs of its constituents without losing sight of its primary objective, that is fixing socially acceptable conditions for night workers. The two instruments may have much more in common than appears at first glance. Indeed, Convention No. 89, as revised by the 1990 Protocol, remains focused on protection even though in substance it expands considerably the exemption possibilities with regard to the prohibition of night work for women, while Convention No. 171, even though it was devised as a gender-neutral instrument, does provide special protection to women under certain circumstances.

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[3] See ILC, 75th Session, 1988, Report III (Part 4B), para. 240, p. 244.

[4] See ILC, 80th Session, 1993, Report III (Part 4B), para. 266, p. 98.

201. The Committee hopes that the present survey will help to clarify both the advisability of regulating night work in general and the acceptability of special protective measures for women having regard to the principles of non-discrimination and equality of treatment between men and women. The Committee concludes that Convention No. 89, as revised by the 1990 Protocol, retains its relevance for some countries as a means of protecting those women who need protection from the harmful effects and risks of night work in certain industries, while acknowledging the need for flexible and consensual solutions to specific problems and for consistency with modern thinking and principles on maternity protection. The Committee believes that a considerable number of governments and employers' and workers' organizations may not clearly understand the full range of possibilities offered by the Protocol with a view to permitting women's night work in certain cases and under specific conditions.

202. In light of the preceding analysis, the Committee considers it necessary that, in addition to encouraging the ratification of Convention No. 171, greater efforts should be made by the Office to help those constituents who are still bound by the provisions of Convention No. 89, and who are not yet ready to ratify Convention No. 171, to realize the advantages of modernizing their legislation in line with the provisions of the Protocol. Bearing in mind that an increasing number of States decide to no longer give effect to, or to denounce, Conventions Nos. 4, 41 or 89, while at the same time Convention No. 171 has not yet attracted many ratifications, the Committee stresses that there is a risk of a complete deregulation of night work through the removal of all protective measures for women and the failure to replace them with a legislation offering appropriate protection to all night workers.

APPENDIX I

TABLE OF REPORTS DUE AND RECEIVED ON THE INSTRUMENTS UNDER CONSIDERATION AND LIST OF RATIFICATIONS/DENUNCIATIONS BY CONVENTION AND COUNTRY

(AS AT 8 DECEMBER 2000)

Article 19 of the Constitution of the International Labour Organization provides that Members shall "report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body" on the position of their law and practice in regard to the matters dealt with in unratified Conventions and Recommendations. The obligations of Members as regards Conventions are laid down in paragraph 5(e) of the abovementioned article. Paragraph 6(d) deals with Recommendations, and paragraph 7(a) and (b) deals with the particular obligations of federal States. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 19, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 218th (November 1981) Session, the Governing Body decided to discontinue the publication of summaries of reports on unratified Conventions and on Recommendations and to publish only a list of reports received, on the understanding that the Director-General would make available for consultation at the Conference the originals of all reports received and that copies of reports would be available to members of delegations on request.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

From now on, reports received under article 19 of the Constitution appear in simplified form in a table annexed to Report III (Part 1B) of the Committee of Experts on the Application of Conventions and Recommendations.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

The reports, which are listed below, refer to the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948.

	C.4 (1919)		C.41 (1934)		C.89 (1948)		P.89 (1990)		Relevant Conventions					
	Rat.	Den.	Rat.	Den.	Rat.	Den.	Rat.	Den.	C.79	C.90	C.103	C.111	C.156	C.171
Afghanistan	1939		1939									1969		
Albania (+)	1932	1964										1997		
Algeria					1962							1969		
Angola (+)	1976				1976							1976		
Antigua and Barbuda (+)												1983		
Argentina (+)	1933	1992	1950 ■						1955	1956		1968	1988	
Armenia (+)												1994		
Australia (+)												1973	1990	
Austria (+)	1924				1950 ○						1969	1973		
Azerbaijan (+)									1992	1992	1992	1992		
Bahamas														
Bahrain (+)					1981							2000		
Bangladesh (+)	1972				1972					1972		1972		
Barbados (+)										1976		1974		
Belarus (+)									1956	1956	1956	1961		
Belgium (+)	1924	1937	1937	1952	1952	1992						1977		1997
Belize (+)					1983						2000	1999	1999	
Benin (+)	1960 ■		1960 ■									1961		
Bolivia					1973					1973	1973	1977	1998	
Bosnia and Herzegovina					1993					1993	1993	1993	1993	
Botswana (+)												1997		
Brazil (+)	1934	1937	1936	1957	1957 ■						1965	1965		
Bulgaria (+)	1922	1960							1949			1960		

	C.4 (1919)		C.41 (1934)		C.89 (1948)		P.89 (1990)		Relevant Conventions					
	Rat.	Den.	Rat.	Den.	Rat.	Den.	Rat.	Den.	C.79	C.90	C.103	C.111	C.156	C.171
Burkina Faso	1960		1960									1962		
Burundi (+)	1963 ■				1963 ■					1971		1993		
Cambodia	1969											1999		
Cameroon	1960	1975			1970					1970		1988		
Canada (+)												1964		
Cape Verde												1979		
Central African Republic	1960		1960									1964		
Chad	1960		1960									1966		
Chile (+)	1931	1976									1994	1971	1994	
China (+)														
Colombia (+)	1933											1969		
Comoros (+)					1978 ■									
Congo	1960	1971	1960	1971	1971							1999		
Costa Rica (+)					1960					1960		1962		
Côte d'Ivoire (+)	1960 ■		1960 ■									1961		
Croatia (+)										1991	1991	1991	1991	
Cuba (+)	1928 ■				1952	1991			1954	1952	1954	1965		
Cyprus (+)					1965	▲	1994			1965		1968		1994
Czech Republic (+)					1993 ■	▲	1993			1993		1993		1996
Democratic Republic of the Congo	1960				1960									
Denmark (+)												1960		
Djibouti (+)					1978									
Dominica (+)												1983		

	C.4 (1919)		C.41 (1934)		C.89 (1948)		P.89 (1990)		Relevant Conventions					
	Rat.	Den.	Rat.	Den.	Rat.	Den.	Rat.	Den.	C.79	C.90	C.103	C.111	C.156	C.171
Dominican Republic					1953 ■	▲			1953	1957		1964		1993
Ecuador (+)											1962	1962		
Egypt (+)			1947	1960	1960							1960		
El Salvador (+)												1995	2000	
Equatorial Guinea											1985			
Eritrea (+)												2000		
Estonia (+)			1935 ■	▲										
Ethiopia (+)												1966	1991	
Fiji														
Finland (+)												1970	1983	
France (+)	1925	1955	1938	1953	1953	1992				1985		1981	1989	
Gabon	1960		1960									1961		
Gambia														
Georgia												1993		
Germany (+)												1961		
Ghana (+)					1959 ■					1961	1986	1961		
Greece (+)	1920	1936	1936	1959	1959	1992				1962	1983	1984	1988	
Grenada														
Guatemala					1952				1952	1952	1989	1960	1994	
Guinea	1959	1968	1959	1966	1966					1966		1960	1995	
Guinea-Bissau	1977				1977							1977		
Guyana												1975		
Haiti (+)										1957		1976		

	C.4 (1919)		C.41 (1934)		C.89 (1948)		P.89 (1990)		Relevant Conventions					
	Rat.	Den.	Rat.	Den.	Rat.	Den.	Rat.	Den.	C.79	C.90	C.103	C.111	C.156	C.171
Honduras												1960		
Hungary (+)	1928	1936	1936	1977							1956	1961		
Iceland												1963	2000	
India	1921		1935	1950	1950					1950		1960		
Indonesia (+)												1999		
Iran, Islamic Republic of												1964		
Iraq			1938	1967	1967							1959		
Ireland	1925	1937	1937	1952	1952	1982						1999		
Israel (+)									1953	1953		1959		
Italy (+)	1923 ■				1952	1992			1952	1952	1971	1963		
Jamaica												1975		
Japan (+)													1995	
Jordan (+)												1963		
Kazakhstan												1999		
Kenya					1965									
Kiribati														
Korea, Republic of (+)												1998		
Kuwait (+)					1961							1966		
Kyrgyzstan									1992	1992	1992	1992		
Lao People's Democratic Republic	1964													
Latvia (+)												1992		
Lebanon (+)					1962					1962		1977		
Lesotho												1998		

	C.4 (1919)		C.41 (1934)		C.89 (1948)		P.89 (1990)		Relevant Conventions					
	Rat.	Den.	Rat.	Den.	Rat.	Den.	Rat.	Den.	C.79	C.90	C.103	C.111	C.156	C.171
Liberia												1959		
Libyan Arab Jamahiriya					1962						1975	1961		
Lithuania (+)	1931 ■								1994	1994		1994		1994
Luxembourg (+)	1928	1982			1958	1982			1958	1958	1969			
Madagascar(+)	1960		1960									1961		
Malawi (+)					1965 ■							1965		
Malaysia (+)														
Mali	1960		1960									1964		
Malta	1988	1991			1965	1991						1968		
Mauritania (+)	1961	1965	1961	1963	1963					1963		1963		
Mauritius (+)														
Mexico (+)										1956		1961		
Moldova, Republic of (+)											1997	1996		
Mongolia											1969	1969		
Morocco (+)	1956		1956									1963		
Mozambique (+)												1977		
Myanmar (+)	1921	1961	1935	1967										
Namibia (+)														
Nepal												1974		
Netherlands (+)	1922	1937	1935	1954	1954	1972				1954	1981	1973	1988	
New Zealand (+)			1938	1950	1950	1981						1983		
Nicaragua (+)	1934 ■											1967		
Niger	1961		1961									1962	1985	

	C.4 (1919)		C.41 (1934)		C.89 (1948)		P.89 (1990)		Relevant Conventions					
	Rat.	Den.	Rat.	Den.	Rat.	Den.	Rat.	Den.	C.79	C.90	C.103	C.111	C.156	C.171
Nigeria														
Norway (+)										1957		1959	1982	
Occupied territories														
Oman (+)														
Pakistan (+)	1921		1935	1951	1951					1951		1961		
Panama (+)					1970 ○							1966		
Papua New Guinea (+)											2000	2000		
Paraguay (+)					1966 ■				1966	1966		1967		
Peru (+)	1945	1997	1945	1997					1962	1962		1970	1986	
Philippines (+)					1953					1953		1960		
Poland (+)									1947	1968	1976	1961		
Portugal (+)	1932	1993			1964	1992					1985	1959	1985	1995
Qatar (+)												1976		
Romania (+)	1921	1957			1957							1973		
Russian Federation (+)									1956	1956	1956	1961	1998	
Rwanda (+)	1962				1962							1981		
Saint Kitts and Nevis												2000		
Saint Lucia												1983		
Saint Vincent and the Grenadines														
San Marino											1998	1986	1988	
Sao Tome and Principe												1982		
Saudi Arabia (+)					1978					1978		1978		
Senegal (+)	1960		1960	1962	1962							1967		

	C.4 (1919)		C.41 (1934)		C.89 (1948)		P.89 (1990)		Relevant Conventions					
	Rat.	Den.	Rat.	Den.	Rat.	Den.	Rat.	Den.	C.79	C.90	C.103	C.111	C.156	C.171
Seychelles (+)												1999		
Sierra Leone												1966		
Singapore (+)														
Slovakia					1993					1993		1993		
Slovenia (+)					1992					1992	1992	1992	1992	
Solomon Islands														
Somalia												1961		
South Africa (+)	1921	1935	1935	1950	1950 ■	○						1997		
Spain (+)	1932 ■				1958	1992			1971	1971	1965	1967	1985	
Sri Lanka (+)	1951	1954	1950	1966	1966	1982				1959	1993	1998		
Sudan												1970		
Suriname (+)			1976 ■	○										
Swaziland					1981					1981		1981		
Sweden (+)												1962	1982	
Switzerland (+)	1922	1936	1936	1950	1950	1992						1961		
Syrian Arab Republic (+)					1949							1960		
Tajikistan									1993	1993	1993	1993		
Tanzania, United Republic of														
Thailand (+)														
The former Yugoslav Republic of Macedonia					1991					1991	1991	1991	1991	
Togo	1960		1960									1983		
Trinidad and Tobago												1970		
Tunisia (+)	1957	1974			1957		2000			1961		1959		

	C.4 (1919)		C.41 (1934)		C.89 (1948)		P.89 (1990)		Relevant Conventions					
	Rat.	Den.	Rat.	Den.	Rat.	Den.	Rat.	Den.	C.79	C.90	C.103	C.111	C.156	C.171
Turkey (+)												1967		
Turkmenistan												1997		
Uganda														
Ukraine (+)									1956	1956	1956	1961	2000	
United Arab Emirates (+)					1982									
United Kingdom (+)	1921	1937	1937	1947								1999		
United States (+)														
Uruguay (+)	1933	1955			1954	1982			1954	1954	1954	1989	1989	
Uzbekistan											1992	1992		
Venezuela (+)	1933	1944	1944								den.	1971	1984	
Viet Nam (+)												1997		
Yemen (+)												1969	1989	
[Yugoslavia]*	1927	1957			1956					1957	1955	1961	1987	
Zambia					1965 ■	▲					1979	1979		
Zimbabwe (+)												1999		
Total	**59**	**29**	**38**	**22**	**65**	**15**	**3**	**0**	**20**	**50**	**37**	**141**	**29**	**6**

(+) Report received.

■ Convention has ceased to apply.

○ Denunciation under consideration.

▲ Intention to denounce announced.

* This refers to the former Socialist Federal Republic of Yugoslavia (SFRY). The Government of the Federal Republic of Yugoslavia, which joined the International Labour Organization on 24 November 2000, has not yet notified its decision concerning the Conventions previously ratified by the former Socialist Federal Republic of Yugoslavia. As from the date of accession of the Federal Republic of Yugoslavia to ILO membership, the former Socialist Federal Republic of Yugoslavia was deleted from the list of ILO member States.

APPENDIX II

SELECTED NATIONAL LEGISLATION RELATING TO NIGHT WORK OF WOMEN IN INDUSTRY BY COUNTRY

Albania

— Labour Code, Act No. 7961 of 12 July 1995.

Algeria

— Act No. 90-11 of 21 April 1990 respecting labour relations.
— Act No. 83-11 of 2 July 1983 on social insurance.

Angola

— General Labour Act No. 2/2000 of 11 February 2000.

Antigua and Barbuda

— Labour Code No. 14 of 1975.

Argentina

— Employment Law No. 24.013 of 13 November 1991.
— Labour Contract Law No. 20.744 of 13 May 1976.

Australia

— Workplace Relations Act, 1996.
— Occupational Health and Safety Act, 1985.
— Clothing Trades Award, 1999.
— Textile Industry Award, 2000.

Austria

— Agricultural Worker Act of 1984, as amended to 1998.
— Maternity Protection Act of 17 April 1979.
— Federal Act of 1 July 1948 respecting the employment of children and young persons, as last amended by Act of 6 November 1997 (Text No. 126).

- Federal Act of 25 June 1969 regarding women's night work.
- Federal Act BGB1.I No. 5/1998.

Azerbaijan

- Labour Code of 1 February 1999.

Bahrain

- Legislative Decree No. 23 of 16 June 1976 promulgating the Labour Law for the Private Sector, as amended by the Legislative Decree No. 14 of 1993.
- Ministerial Decision No. 18/1976.

Bangladesh

- Factories Act, 1965.
- Employment of Children Act, 1938.
- Maternity Benefit Act, 1939.
- Shops and Establishments Act, 1965.
- Tea Plantations Labour Ordinance, 1962.

Barbados

- Employment (Miscellaneous Provisions) Act of 24 March 1977.
- Employment of Women (Maternity Leave) Act, 1976.

Belarus

- Labour Code of 26 July 1999 (Text No. 432).

Belgium

- Act of 17 February 1997 on night work.
- Labour Act of 16 March 1971, as amended.
- Collective Agreement No. 46 of 23 March 1990 concerning night work.

Belize

- Labour Act, Chapter 234, 1980.

Benin

- Law No. 98-004 of 27 January 1998 to establish a Labour Code.

Bolivia

- Supreme Decree of 26 May 1939 to issue the Labour Code.
- Decree of 23 August 1943 regulating the General Labour Act.

- Act No. 975 of 2 May 1988 on employment and stability of the pregnant worker.
- Act No. 1403 of 18 December 1992 establishing the Minor's Code.
- Act No. 2026 of 27 October 1999 establishing the Code of Children and Adolescents.

Botswana

- Employment Act No. 29 of 1982.
- Employment (Amendment) Act No. 26 of 1992.

Brazil

- Federal Constitution, as amended by the constitutional amendment No. 20 of 15 December 1998.
- Decree No. 5.452 of 1 May 1943 concerning the consolidation of Labour Acts.
- Act No. 8.213/91.
- Transnational Constitutional Provisions Act.

Bulgaria

- Labour Code of 24 March 1986, as amended to 1996.

Burkina Faso

- Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code.
- Decree No. 436/ITLS/HV of 15 July 1953 concerning night work hours.
- Decree No. 539/ITLS/HV of 29 July 1954 concerning the employment of children.
- Decree No. 5254/IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women.

Burundi

- Labour Code, Decree No. 1/037 of 7 July 1993.

Cameroon

- Labour Code, Law No. 92/007 of 14 August 1992.

Central African Republic

- Act No. 61-221 of 2 June 1961 establishing the Labour Code.
- Decree No. 839/ITT of 22 November 1953 concerning night work hours.
- Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women.
- Decree No. 3157 of 8 October 1951 concerning the employment of children.

Chad

- Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code.

Chile

- Labour Code of 7 January 1994.
- Labour Directorate Circular No. 1671/64 of 18 March 1996.

China

- Labour Act of 5 July 1994.
- Decree of 28 June 1988 of the State Council adopting Regulations Governing Labour Protection for Female Staff Members and Workers.

Colombia

- Labour Code, Decrees Nos. 2663 and 3743 of 1950, adopted by Law No. 141 of 1961.
- Decree No. 13 of 4 January 1967 to incorporate the provisions of Act No. 73 of 13 December 1966.
- Act No. 50 of 28 December 1990 amending the Labour Code.
- Code of Minors, Decree No. 2737/89.

Comoros

- Labour Code, Law No. 84-018/PR of 18 February 1984.

Congo

- Act No. 45-75 of 15 March 1975 establishing the Labour Code.

Costa Rica

- Labour Code of 1943, as amended up to 1996.
- Childhood and Adolescence Law No. 7739 of 6 January 1998.
- Decree No. 26898-MTSS of 30 March 1998.

Côte d'Ivoire

- Act No. 95-15 of 12 January 1995 establishing the Labour Code.
- Decree No. 96-204 of 7 March 1996 regarding night work.

Croatia

- Labour Act of 17 May 1995 (Text No. 758).

Cuba

- Labour Code, Law No. 49 of 28 December 1984.
- Decree No. 101 of 3 March 1982 establishing Regulations on Protection and Hygiene at Work.
- Maternity Law No. 1263 of 14 January 1974, as amended by Law No. 61 of 27 September 1987.
- Protection and Hygiene at Work Law No. 13 of 28 December 1977.
- Resolution No. 10/91 of 16 July 1991 of the State Committee on Labour and Social Security.

Cyprus

- Employment of Women (During the Night) Law of 26 February 1932.
- Employment of Children and Young Persons (Amendment) Law No. 87(I) of 1999.
- Maternity Protection Law No. 100(I) of 1997.

Czech Republic

- Labour Code, Act No. 65/1965, as amended up to 1996.

Democratic Republic of the Congo

- Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code.
- Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children.

Denmark

- Order No. 867 of 13 October 1984, as amended by Order No. 1117 of 17 December 1997.
- Order No. 516 of 14 June 1996 respecting work by young persons.

Djibouti

- Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952.

Dominica

- Labour Standards (Amendment) Act 1991.
- Employment of Women, Young Persons and Children Act 1991.

Dominican Republic

- Act No. 16-92 of 29 May 1992 promulgating the Labour Code.

Ecuador

- Labour Code of 29 September 1997.

Egypt

- Labour Code promulgated by Act No. 137 of 1981.
- Act No. 43 of 1974 concerning the use of Arab and foreign capital and free zones, as amended by Act No. 32 of 1977.
- Act No. 230 promulgating the Investment Law of 20 July 1989.
- Ministerial Decree No. 23 of 7 February 1982.

El Salvador

- Labour Code of 15 June 1972, as amended by Decree No. 859 of 21 April 1994.

Eritrea

- Labour Law No. 8/1991.

Estonia

- Employment Contracts Act of 15 April 1992.
- Working and Rest Time Act of 15 December 1993.

Ethiopia

- Labour Proclamation No. 42/1993.

Finland

- Employment Contracts Act No. 320 of 1970, as amended up to 1996.
- Hours of Work Act No. 605 of 1996.
- Occupational Safety and Health Act.

France

- Labour Code.

Gabon

- Act No. 3/94 of 21 November 1994 establishing the Labour Code.

Germany

- Federal Act on Maternity Protection of 17 January 1997.
- Youth Employment Protection Act of 12 April 1976.

Ghana

- Labour Decree No. 157 of 10 April 1967 on night work.

Greece

- Presidential Decree No. 176/97 respecting measures to improve the security and health at work of working women during pregnancy, after birth, or during breastfeeding.
- Presidential Decree No. 88 of 7 May 1999 concerning regulation of working hours in conformity with European Council Directive 93/104.

Guatemala

- Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995.
- Decree No. 64-92 of 2 December 1992 regarding the reform of the Labour Code.

Guinea

- Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code.
- Decree No. 2791/MTASE/DNTLS/96 of 22 April 1996 respecting child labour.
- Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women.

Guinea-Bissau

- General Labour Act No. 2/86 of 5 April 1986.

Haiti

- Labour Code of 12 September 1961, as revised by Decree of 24 February 1984.

Hungary

- Act No. 22 of 3 March 1992 on the Labour Code.

India

- Factories Act No. 53 of 23 September 1948, as amended.
- Child Labour (Prohibition and Regulation) Act No. 61 of 23 December 1986.
- Maternity Benefit Act No. 53 of 12 December 1961.

Indonesia

- Law on Manpower Affairs No. 25 of 3 October 1997.
- Ministerial Regulation No. 04/MEN/1989 on procedures to employ women workers at night.

- Ordinance of 17 December 1925 on measures limiting child labour and night work for women.
- Ministerial Regulation No. 03/MEN/1996 on prohibition of termination of employment for women due to be married, pregnant or give birth.
- Act No. 1 of 6 January 1951.

Iraq

- Act No. 71 of 27 July 1987 promulgating the Labour Code.

Israel

- Employment of Women Law No. 5714-1954.
- Youth Labour Law No. 5713-1953.

Italy

- Act No. 25 of 5 February 1999 on Provisions for the fulfilment of obligations deriving from Italy's membership in the European Union – Community Law 1998.
- Legislative Decree No. 532 of 26 November 1999 on Provisions relating to night work.

Japan

- Labour Standards Law No. 49 of 7 April 1947, as amended through law No. 107 of 9 June 1995.
- Law No. 76 of 15 May 1991 concerning the welfare of workers who take care of children or other family members including childcare and family care leave.

Jordan

- Labour Code, Law No. 8 of 1996.
- Ministerial Order No. 4201 of 30 April 1997 concerning jobs and hours in which the employment of women is prohibited.

Kenya

- Employment Act No. 2 of 15 April 1976.

Korea, Republic of

- Labour Standards Act No. 5309 of 13 March 1997.

Kuwait

- Act No. 38 of 1964 regarding employment in the private sector.
- Ministerial Order No. 28 of 1976 on the definition of the term night.
- Ministerial Order No. 5 of 1985.

Latvia

- Labour Code, as amended to 25 October 1994.

Lebanon

- Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996.

Libyan Arab Jamahiriya

- Labour Code, Act No. 58-2970 of 1 May 1970.
- Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m.

Lithuania

- Code of Labour Laws No. VIII-526 of 1 June 1972.
- Act No. I-266 of 7 October 1993 on Labour Protection (Occupational Safety), as amended to 3 November 1994.

Luxembourg

- Act of 3 July 1975 on maternity protection, as amended by Act of 7 July 1998.
- Act of 28 October 1969 respecting the protection of children and young workers.

Madagascar

- Act No. 94-029 of 25 August 1995 establishing the Labour Code.
- Decree No. 72-226 of 6 July 1972 regulating overtime and night work.

Malawi

- Employment of Women, Young Persons and Children Act No. 22 of 1939 (Cap. 55:04).
- Employment Act No. 6 of 2000.

Malaysia

- Children and Young Persons (Employment) Act No. 40 of 28 April 1966, as amended to 1988.
- Employment Act No. 265 of 1955, as amended to 1981.

Mali

- Act No. 92-020 of 23 September 1992 establishing the Labour Code.
- Decree No. 96-178/P-RM of 13 June 1996 to make regulations under the Labour Code.

Mauritania

- Act No. 63-023 of 23 January 1963 to establish a Labour Code.
- Order No. 5254/IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women.

Mauritius

- Labour Act No. 50 of 24 December 1975.
- Export Processing Zones Act, 1970.
- Industrial Expansion Act No. 11 of 28 April 1993.

Mexico

- Political Constitution of the United Mexican States.
- Federal Labour Act, as amended up to 1 October 1995.
- Social Security Act of 19 December 1995.

Moldova, Republic of

- Labour Code, Law of 25 May 1973, as amended up to 23 July 1998.

Morocco

- Decree of 2 July 1947 to regulate employment.
- Vizirial Order of 8 March 1948 to specify the undertakings which are exempted from the provisions prohibiting the employment of women and children at night.

Mozambique

- Act No. 8/98 of 20 July 1998.

Namibia

- Labour Act of 13 March 1992.

Netherlands

- Working Time Act of 23 November 1995.

New Zealand

- Parental Leave and Employment Protection Act No. 129 of 10 July 1987.

Nicaragua

- Labour Code, Act No. 185 of 30 October 1996.
- Childhood and Adolescence Act No. 287 of 27 May 1998.

Niger

— Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code.

— Decree No. 67-126/MFP/T of 7 September 1967 on Labour Regulations.

Norway

— Act No. 4 of 4 February 1977 respecting Worker's Protection and the Working Environment, as subsequently amended, last by Act No. 19 of 28 February 1997.

— Ordinance No. 554 of 30 April 1998 respecting work of children and of youth.

Oman

— Labour Law enacted by the Sultani Decree No. 34/73.

— Ministerial Decision No. 19/74.

Pakistan

— Factories Act, 1934, as amended to 1987.

— Mines Act, 1923.

— Employment of Children Act, 1991.

— West Pakistan Maternity Benefit Ordinance, 1958.

Panama

— Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995.

Papua New Guinea

— Employment Act No. 54 of 21 August 1978.

Paraguay

— Labour Code, Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995.

Peru

— Constitution of 29 December 1993.

— Synthesis of Labour Legislation as approved by Ministerial Resolution 58-97-TR of 7 July 1997.

— Code on Children and Adolescence, Law No. 27.337 of 21 July 2000.

— Law No. 26.664 of 25 June 1996.

— Legislative Decree No. 728 of 21 March 1997.

Philippines

- Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended.
- Social Security Act No. 8282 of 1997.

Poland

- Labour Code, Act of 26 June 1974, as amended up to 1996.

Portugal

- Act No. 4/84 of 5 April 1984 concerning maternity and paternity protection.
- Act No. 58/99 of 30 June 1999.
- Act No. 142/99 of 31 August 1999.
- Legislative Decree No. 409/71 of 27 September 1971.

Qatar

- Labour Law No. 3 of 1962.

Romania

- Labour Code, Law No. 10 of 23 November 1972.

Russian Federation

- Labour Code of 9 December 1971, as amended up to 30 April 1999.

Rwanda

- Labour Code, Act of 28 February 1967.
- Decree of 14 March 1957 respecting working hours, weekly rests and public holidays.

Saudi Arabia

- Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code.

Senegal

- Labour Code, Law No. 97-17 of 1 December 1997.
- Decree No. 70-182 of 20 February 1970 concerning night work hours.
- Order No. 3724/IT of 22 June 1954 regarding child labour.
- Order No. 5254/IGTLS/AOF of 19 July 1954 regarding conditions of work of women and pregnant women.

Seychelles

- Conditions of Employment Regulations of 24 April 1991 (S.I. 34).
- Conditions of Employment (Amendment) Regulations of 27 June 1991 (S.I. 45).
- International Trade Zone (Conditions of Employment) Order of 31 January 1997 (S.I. 14).

Singapore

- Employment Act (Chapter 91), as amended to 30 April 1996.
- Employment (Female Workmen) Regulations 1988, No. S101 of 26 April 1988.

Slovakia

- Act No. 451/1992 providing for the Labour Code.

Slovenia

- Act on the Fundamental Rights ensuing from Labour Relations, Text No. 921 of 28 September 1989.
- Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991.
- General Collective Agreement for Commercial Activities (*Official Gazette* No. 40-2205/1997).

South Africa

- Basic Conditions of Employment Act No. 75 of 26 November 1997.
- Labour Relations Act No. 66 of 29 November 1995.
- Mine Health and Safety Act No. 29 of 30 May 1996.

Spain

- Constitution of 27 December 1978.
- Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law.
- Law No. 39/99 of 5 November 1999 regarding the reconciliation of work and family life.
- Prevention of Labour Risks Law No. 31/95 of 8 November 1995.

Sri Lanka

- Employment of Women, Young Persons and Children Act No. 47 of 1956.
- Employment of Women, Young Persons and Children (Amendment) Act No. 32 of 1984.
- Maternity Benefits (Amendment) Act No. 43 of 1985.
- Maternity Benefits Ordinance (Chapter 140) of 28 July 1941.

Suriname

— Labour Act of 1963, as amended by Decree E-41 of 12 September 1983.

Swaziland

— Employment Act No. 5 of 26 September 1980.

Sweden

— Hours of Work Act (1982:673) of June 1982.

Switzerland

— Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998.

— *Code des Obligations*, Federal Act of 30 March 1911 supplementing the Swiss Civil Code.

— Order No. 1 of 10 May 2000 relative to Federal Labour Act.

Syrian Arab Republic

— Law No. 91 of 5 April 1959 establishing the Labour Code.

— Order No. 1663 of 28 December 1985 regarding employment of women in production.

— Order No. 666 of 20 July 1976 to prescribe the cases and types of work in which women may be employed between 8 p.m. and 7 a.m.

Thailand

— Labour Protection Act (B.E. 2541) of 12 February 1998.

Togo

— Ordinance No. 16 of 8 May 1974 establishing the Labour Code.

— Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children.

Tunisia

— Labour Code, Act No. 66-27 of 30 April 1966, as last amended by Act No. 96-62 of 15 July 1996.

Turkey

— Labour Act No. 1475 of 25 August 1971.

— Decree No. 7/6909 of 27 July 1973 to approve Regulations respecting the Conditions of Work for Women Working Night Shifts on Industrial Work.

Ukraine

— Labour Code of 11 April 1994.

— Law No. 3694-12 of 15 December 1993.

— Regulation No. 381 of 27 March 1996 on the programme of disengagement of women to productions linked with arduous work and dangerous conditions, as well as limitation of their work at night for 1996-98 (Text No. 277).

United Arab Emirates

— Federal Law No. 8 of 1980 regarding regulation of labour relations.

— Ministerial Order No. 46/1 of 1980, defining the types of work in which women may be employed between 10 p.m. and 7 a.m.

— Ministerial Order No. 47/1 of 1980, concerning the exemption of certain establishments from the Law regulating the employment of young persons and women.

United Kingdom

— Employment Rights Act 1996.

— Management of Health and Safety at Work (Amendment) Regulations 1999.

— Maternity and Parental Leave Regulations 1999.

Anguilla

— Fair Labour Standards Ordinance, 1988.

Falkland Islands (Malvinas)

— Employment of Women, Young Persons and Children Ordinance, 1967.

Gibraltar

— Employment Ordinance.

— Employment (Maternity and Health and Safety) Regulations, 1996.

Guernsey

— Act relative to the Employment of Women, Young Persons and Children, 1926.

Isle of Man

— Employment Act, 1991.

United States

— Code of Federal Regulations.

Uruguay

- Decree of 1 June 1954.
- Decree No. 37/997 of 14 February 1997.
- Law No. 11.577 of 14 October 1950.
- Law No. 15.084 of 28 November 1980.

Venezuela

- Labour Act of 27 November 1990, as modified by Act of 19 June 1997.
- Decree No. 1563 of 31 December 1973 on Labour Act Regulations.
- Decree No. 3235 of 20 January 1999.

Viet Nam

- Labour Code of 23 June 1994.

Yemen

- Labour Code, Act No. 5 of 1995, as amended by Act No. 25 of 1997.

Zambia

- Employment of Women, Young Persons and Children Act (Cap. 505) of 13 April 1933, as amended, last by Act No. 4 of 6 September 1991.
- Minimum Wages and Conditions of Employment (General) Order of 23 October 1997 (S.I. No. 119).

Zimbabwe

- Labour Relations Act No. 12 of 1992 (Chapter 28:01).

APPENDIX III

MAIN PROVISIONS OF THE INSTRUMENTS ON NIGHT WORK OF WOMEN IN INDUSTRY

Convention No. 4

Convention concerning Employment of Women during the Night

The General Conference of the International Labour Organisation,

Having been convened at Washington by the Government of the United States of America on the 29th day of October 1919, and

Having decided upon the adoption of certain proposals with regard to women's employment; during the night, which is part of the third item in the agenda for the Washington meeting of the Conference, and

Having determined that these proposals shall take the form of an international Convention,

adopts the following Convention, which may be cited as the Night Work (Women) Convention, 1919, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

Article 1

1. For the purpose of this Convention, the term "industrial undertaking" includes particularly –

(a) mines, quarries, and other works for the extraction of minerals from the earth;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity or motive power of any kind;

(c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, waterwork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure.

2. The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

Article 2

1. For the purpose of this Convention, the term "night" signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning.

2. In those countries where no government regulation as yet applies to the employment of women in industrial undertakings during the night, the term "night" may provisionally, and for a maximum period of three years, be declared by the Government to signify a period of only ten hours, including the interval between ten o'clock in the evening and five o'clock in the morning.

Article 3

Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.

Article 4

Article 3 shall not apply –

(a) in cases of *force majeure*, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character;

(b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss.

Article 5

In India and Siam, the application of Article 3 of this Convention may be suspended by the Government in respect to any industrial undertaking, except factories as defined by the national law. Notice of every such suspension shall be filed with the International Labour Office.

Article 6

In industrial undertakings which are influenced by the seasons and in all cases where exceptional circumstances demand it, the night period may be reduced to ten hours on sixty days of the year.

Article 7

In countries where the climate renders work by day particularly trying to the health, the night period may be shorter than prescribed in the above Articles, provided that compensatory rest is accorded during the day.

[…]

Convention No. 41

Convention concerning Employment of Women during the Night (Revised 1934)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighteenth Session on 4 June 1934, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Convention concerning employment of women during the night adopted by the Conference at its First Session, which is the seventh item on the agenda of the session, and

Considering that these proposals must take the form of an international Convention,

adopts this nineteenth day of June of the year one thousand nine hundred and thirty-four the following Convention, which may be cited as the Night Work (Women) Convention (Revised), 1934:

Article 1

1. For the purpose of this Convention, the term "industrial undertaking" includes particularly –

(a) mines, quarries, and other works for the extraction of minerals from the earth;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity or motive power of any kind;

(c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, waterwork or other work of construction, as well as the preparation for or laying the foundations of any such work or structure.

2. The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

Article 2

1. For the purpose of this Convention, the term "night" signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning.

2. Provided that, where there are exceptional circumstances affecting the workers employed in a particular industry or area, the competent authority may, after consultation with the employers' and workers' organisations concerned, decide that in the case of women employed in that industry or area, the interval between eleven o'clock

in the evening and six o'clock in the morning may be substituted for the interval between ten o'clock in the evening and five o'clock in the morning.

3. In those countries where no government regulation as yet applies to the employment of women in industrial undertakings during the night, the term "night" may provisionally, and for a maximum period of three years, be declared by the Government to signify a period of only ten hours, including the interval between ten o'clock in the evening and five o'clock in the morning.

Article 3

Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.

Article 4

Article 3 shall not apply –

(a) in cases of *force majeure*, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character;

(b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss.

Article 5

In India and Siam, the application of Article 3 of this Convention may be suspended by the Government in respect to any industrial undertaking, except factories as defined by the national law. Notice of every such suspension shall be filed with the International Labour Office.

Article 6

In industrial undertakings which are influenced by the seasons and in all cases where exceptional circumstances demand it, the night period may be reduced to ten hours on sixty days of the year.

Article 7

In countries where the climate renders work by day particularly trying to the health, the night period may be shorter than prescribed in the above Articles, provided that compensatory rest is accorded during the day.

Article 8

This Convention does not apply to women holding responsible positions of management who are not ordinarily engaged in manual work.

[...]

Convention No. 89

Convention concerning Night Work of Women Employed in Industry (Revised 1948)

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Night Work (Women) Convention, 1919, adopted by the Conference at its First Session, and the Night Work (Women) Convention (Revised), 1934, adopted by the Conference at its Eighteenth Session, which is the ninth item on the agenda of the session, and

Considering that these proposals must take the form of an international Convention,

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Night Work (Women) Convention (Revised), 1948:

PART I. GENERAL PROVISIONS

Article 1

1. For the purpose of this Convention, the term "industrial undertaking" includes particularly –

(a) mines, quarries, and other works for the extraction of minerals from the earth;

(b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding or in the generation, transformation or transmission of electricity or motive power of any kind;

(c) undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work.

2. The competent authority shall define the line of division which separates industry from agriculture, commerce and other non-industrial occupations.

Article 2

For the purpose of this Convention the term "night" signifies a period of at least eleven consecutive hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning; the competent authority may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings, but shall consult the employers' and workers' organisations concerned before prescribing an interval beginning after eleven o'clock in the evening.

Article 3

Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.

Article 4

Article 3 shall not apply –

(a) in case of *force majeure*, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character;

(b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration when such night work is necessary to preserve the said materials from certain loss.

Article 5

1. The prohibition of night work for women may be suspended by the government, after consultation with the employers' and workers' organisations concerned, when in case of serious emergency the national interest demands it.

2. Such suspension shall be notified by the government concerned to the Director-General of the International Labour Office in its annual report on the application of the Convention.

Article 6

In industrial undertakings which are influenced by the seasons and in all cases where exceptional circumstances demand it, the night period may be reduced to ten hours on sixty days of the year.

Article 7

In countries where the climate renders work by day particularly trying, the night period may be shorter than that prescribed in the above Articles if compensatory rest is accorded during the day.

Article 8

This Convention does not apply to –

(a) women holding responsible positions of a managerial or technical character; and

(b) women employed in health and welfare services who are not ordinarily engaged in manual work.

[...]

Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 77th Session on 6 June 1990, and

Having decided upon the adoption of certain proposals with regard to night work, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Protocol to the Night Work (Women) Convention (Revised), 1948 (hereinafter referred to as "the Convention"),

adopts this twenty-sixth day of June of the year one thousand nine hundred and ninety the following Protocol, which may be cited as the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948:

Article 1

1. (1) National laws or regulations, adopted after consulting the most representative organisations of employers and workers, may provide that variations in the duration of the night period as defined in Article 2 of the Convention and exemptions from the prohibition of night work contained in Article 3 thereof may be introduced by decision of the competent authority:

(a) in a specific branch of activity or occupation, provided that the organisations representative of the employers and the workers concerned have concluded an agreement or have given their agreement;

(b) in one or more specific establishments not covered by a decision taken pursuant to clause (a) above, provided that:

  (i) an agreement has been concluded in the establishment or enterprise concerned between the employer and the workers' representatives concerned; and

  (ii) the organisations representative of the employers and the workers of the branch of activity or occupation concerned or the most representative organisations of employers and workers have been consulted;

(c) in a specific establishment not covered by a decision taken pursuant to clause (a) above, and where no agreement has been reached in accordance with clause (b)(i) above, provided that:

  (i) the workers' representatives in the establishment or enterprise as well as the organisations representative of the employers and the workers of the branch of activity or occupation concerned or the most representative organisations of employers and workers have been consulted;

  (ii) the competent authority has satisfied itself that adequate safeguards exist in the establishment as regards occupational safety and health, social services and equality of opportunity and treatment for women workers; and

(iii) the decision of the competent authority shall apply for a specified period of time, which may be renewed by means of the procedure under sub-clauses (i) and (ii) above.

(2) For the purposes of this paragraph the term "workers' representatives" means persons who are recognised as such by national law or practice, in accordance with the Workers' Representatives Convention, 1971.

2. The laws or regulations referred to in paragraph 1 shall determine the circumstances in which such variations and exemptions may be permitted and the conditions to which they shall be subject.

Article 2

1. It shall be prohibited to apply the variations and exemptions permitted pursuant to Article 1 above to women workers during a period before and after childbirth of at least 16 weeks, of which at least eight weeks shall be before the expected date of childbirth. National laws or regulations may allow for the lifting of this prohibition at the express request of the woman worker concerned on condition that neither her health nor that of her child will be endangered.

2. The prohibition provided for in paragraph 1 of this Article shall also apply to additional periods in respect of which a medical certificate is produced stating that this is necessary for the health of the mother or child:

(a) during pregnancy; or

(b) during a specified time prolonging the period after childbirth fixed pursuant to paragraph 1 above.

3. During the periods referred to in paragraphs 1 and 2 of this Article:

(a) a woman worker shall not be dismissed or given notice of dismissal, except for justifiable reasons not connected with pregnancy or childbirth;

(b) the income of a woman worker concerned shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living. This income maintenance may be ensured through assignment to day work, extended maternity leave, social security benefits or any other appropriate measure, or through a combination of these measures.

4. The provisions of paragraphs 1, 2 and 3 of this Article shall not have the effect of reducing the protection and benefits connected with maternity leave.

Article 3

Information on the variations and exemptions introduced pursuant to this Protocol shall be included in the reports on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation.

Article 4

1. A Member may ratify this Protocol at the same time as or at any time after its ratification of the Convention, by communicating its formal ratification of the Protocol to the Director-General of the International Labour Office for registration. Such ratification shall take effect 12 months after the date on which it has been registered by

the Director-General. Thereafter the Convention shall be binding on the Member concerned with the addition of Articles 1 to 3 of this Protocol.

[...]

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